In the Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 725.

STANDARD OIL COMPANY OF NEW JERSEY ET AL.,
APPELLANTS,

v.

UNITED STATES OF AMERICA, APPELLEE.

BRIEF FOR THE UNITED STATES.

VOLUME 1.

SUMMARY OF THE FACTS AND BRIEF OF THE LAW.

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VOLUME I.

SUMMARY OF THE FACTS AND BRIEF OF THE LAW.

This is an appeal by the defendants from the judgment of the United States Circuit Court for the Eastern Division of the Eastern Judicial District of Missouri. The opinion of the court and the decree will be found in volume A of the record, pages 570, 525.

The record in this case consists of twenty-three volumes; the testimony was printed in the court below. Volume A consists of the pleadings, opinions, and judgment in the court below, and other documents printed on the appeal. Volumes 1 to 10, inclusive, comprise the petitioner's direct testimony and exhibits; volumes 11 to 19, inclusive, comprise the testimony and exhibits of the defendants; and volumes 20 and 21 comprise the petitioner's rebuttal testimony and exhibits. Volume 22 consists of the record in the case of *State of Ohio* v. *Standard Oil Company*. When a page is referred to in this

brief, the volume is also given. A list of the government's witnesses on direct testimony is given at the beginning of volume 1, and of the witnesses on rebuttal at the beginning of volume 20. Both numerical and alphabetical indexes of the petitioner's exhibits are printed at the end of volume 21. A list of the defendant's witnesses is at the end of volume 17, and their indexes of exhibits are at the end of volume 19.

The defendants put in issue practically all the Government's allegations. This necessitated taking a large amount of testimony. But the principal facts of this case are undisputed, and in order to avoid the necessity of the court's reading this enormous record the government has, in addition to the brief of law and the summary of the facts in this volume, prepared more elaborate statements of the facts on certain branches of the case, which will be found in volume 2 of the brief.

This is a suit brought by the United States against seven individuals, the Standard Oil Company of New Jersey, a holding company, and about 75 subsidiary corporations, limited partnerships, and copartnerships. The Standard Oil Company of New Jersey acquired since 1899, and holds by direct stock ownership, 65 companies. These 65 companies own the stock of 49 other companies, making a total of 114 companies, not including 3 independent companies in which the Standard of New Jersey owns some stock but not a controlling interest. The decree in this case runs against the seven individual

defendants and the 36 principal domestic companies and 1 foreign company which the Standard Oil Company of New Jersey controls by stock ownership.

The opinion of the court below in this case was written by Judge Sanborn and concurred in by Judges Van Devanter, Hook, and Adams. There was also a concurring opinion by Judge Hook. (Vol. A, pp. 570 to 590:) The court found that the 7 individual defendants and the corporations named had entered into and are now operating a combination and conspiracy in restraint of trade, in violation of section 1, and had combined and conspired to monopolize the commerce in oil and its products and had secured to themselves an unlawful monopoly of the same, in violation of section 2. The court found the facts, stating the history of the Standard Oil combination: First, the combination of the stocks of various competing companies in the hands of 3 trustees, George H. Vilas, M. R. Keith, and George F. Chester, to hold and manage them for, and to divide and distribute them among, the 37 stockholders of the Standard Oil Company; that this trust held property worth more than $55,000,000. That in January, 1882, the second trust was organized, known as the "Standard Oil Trust," in which these stocks were placed in the hands of 9 trustees, a majority being the individual defendants herein. That the said trust was declared illegal in March, 1892, by the Supreme Court of Ohio, on the ground that it tended to create a monopoly. That by reason thereof a few

days later, and on March 21, the holders of the trust certificates resolved to terminate and dissolve the same, and to distribute the stocks held by the trustees among the trust certificate holders, who then numbered several thousand. The court found that the scheme of dissolution was not completely carried out, but only a bare majority of the certificates were liquidated, and those only to the trustees and their intimate associates; that, by reason of this scheme of dissolution, the trustees and their associates—a majority of them being individual defendants in this case—controlled all of the companies until the year 1899; and that in 1899 the defendants organized the third and last combination, being the combination in question in this case, the Standard Oil Company of New Jersey was made the holding corporation, its stock was increased to $100,000,000, and the stocks of the principal corporations theretofore controlled by the trustees were exchanged for the stock of the Standard Oil Company of New Jersey, so that the latter company succeeded to the control of the stocks theretofore held by the trustees, and the management and control of all the said companies.

The court enjoined the Standard Oil Company of New Jersey from voting the stocks or exercising any control over the said 37 subsidiary companies; and enjoined the subsidiary companies from paying any dividends to the Standard Oil Company of New Jersey, or permitting it to exercise any control over them by virtue of the stock ownership or power ac-

quired by means of the combination; and enjoined the individuals and corporations from entering into or performing any like combination in effect evading the decree; and enjoined the individual defendants, the Standard Oil Company of New Jersey, and the said 37 subsidiary corporations, from engaging or continuing in interstate commerce in petroleum or its products during the continuance of the illegal combination.

The court held that combining all the stocks of these companies in the hands of the Standard Oil Company of New Jersey in 1899 constituted a combination in restraint of trade and also a monopoly under section 2.

There is practically no dispute about the facts found by the court as the basis of its judgment, and the question is, therefore, whether upon the authorities this judgment is correct. These facts, and the argument of the Government's counsel upon the law thereof, will be found in this volume. There are additional facts which it seems to us have an important bearing upon the case and tend to strengthen the position of the court below, and we have taken the liberty of stating these facts more in detail in volume 2 of this brief.

This particular combination was created in 1899, and ordinarily we would commence the history at that time; but as the earlier combinations which were dissolved from time to time have some bearing upon the case, we shall now give the entire history of the Standard Oil organization upon which the court below based its judgment in this case.

SUMMARY OF THE FACTS.

From the bill, the answers, and the testimony the following facts appear: About 1870 John D. Rockefeller, William Rockefeller, and Henry M. Flagler conceived the purpose of controlling the petroleum trade, both domestic and export, and obtaining a monopoly thereof. We believe the evidence fully justifies the statement that these men entered into a conspiracy which from time to time took the form of various combinations; that shortly thereafter they were joined in the conspiracy by Henry H. Rogers, John D. Archbold, Oliver H. Payne, Charles M. Pratt, and various other persons. For the purposes of this case, the history of this conspiracy is naturally divided into three periods.

In the first period, from 1870 to 1882, it took the form of combination between a large number of manufacturers, who acted in harmony and whose stock interests were pooled in the hands of three trustees in 1879.

In the second period, from 1882 to 1899, it took the form of a trust under the Trust Agreement of 1882, whereby the stocks of a large number of corporations and limited partnerships were placed in the hands of nine trustees, of which these individual defendants were the majority, who controlled the various separate corporations and limited partnerships.

In the third period, from 1899 to the present time, the conspiracy has taken the form of a holding corporation, the Standard Oil Company of New Jersey, which has controlled the principal corporations, limited partnerships, and copartnerships engaged in the business, by stock ownership, agreements in restraint of trade, and otherwise.

It appears from the allegations of the petition, the admissions in the answers, and the testimony taken in this case that interstate trade and commerce has thus been controlled and monopolized. The business involves the production and purchase of crude petroleum at the wells in the various States where oil has been discovered; its transportation from said States by rail, and in modern times principally by pipe lines controlled by the combination, to the various refining points throughout the United States, where the same is refined and manufactured into various products; the transportation of these products into the various States by rail and by water, and the marketing thereof.

We will therefore state the history of this organization as it has from time to time developed during these three periods.

I. HISTORY OF THE COMBINATION DURING THE FIRST PERIOD, FROM 1870 TO 1882.

In 1870 John D. Rockefeller, Samuel Andrews, William Rockefeller, Henry M. Flagler, and Stephen V. Harkness were members of the firms of William Rockefeller & Co., Rockefeller & Andrews, and Rockefeller & Co. They were engaged in the business of refining and selling petroleum and its products in the city of Cleveland, Ohio. During this same year these copartnerships were consolidated into the Standard Oil Company of Ohio, which was organized at that time with a capital stock of $1,000,000, which capital stock was increased on February 10, 1872, to $2,500,000, and on March 10, 1875, to $3,500,000. (Rockefeller, vol. 16, p. 3053 et seq.; Petition, vol. A, p. 8; Ans.,vol. A, p. 474.)

From 1870 to 1872 there were about 200 refineries in the United States. They extended from Portland, Me., to New Orleans, La., and were principally located along the Atlantic seaboard, in Pittsburg and Erie, Pa., and the oil regions of Pennsylvania, and in Cleveland, Ohio. These companies were competing each with the other in the manufacture, sale, and transportation in interstate commerce of petroleum and its products. (Petition, vol. A, pp. 8-9;

answer, pp. 474-75; Emery, vol. 6, pp. 2610–2612; Irwin, vol. 6, pp. 3011–3012.)

From 1872 to 1882 the Standard Oil Company and the others associated with it in this combination were favored by rebates, preferential rates, and discriminations extended to them by the railroads, while outside concerns were charged the full rates. This discrimination was so marked that the independent refiners and the crude-oil producers held public meetings throughout the oil regions, petitioned the legislature of Pennsylvania and Congress, besought the railroads to grant them equal rates, and in every way endeavored to obtain relief from this oppressive condition, but without avail. The result was that all of the leading refiners joined in the combination, and most of the balance were crushed out and their refineries dismantled.

The first step in the process of this combination was the organization of the South Improvement Company. It is true that after the exposure of the contracts which this company entered into with the railroads for rebates its charter was repealed by the legislature, but the scheme was in substance afterwards carried out, and it is therefore proper to here state with some detail the history of this company, as it was the first step in the scheme of combination.

SOUTH IMPROVEMENT COMPANY.

The South Improvement Company was organized in 1871, using an old charter. The capital stock was

divided into 2,000 shares, and was subscribed for as follows:

	Shares.
William Frew	10
W. P. Logan	10
John P. Logan	10
Charles Lockhart	10
Robert S. Waring	10
W. G. Warden	475
O. F. Waring	475
P. H. Watson	100
H. M. Flagler	180
O. H. Payne	180
J. A. Bostwick	180
William Rockefeller	180
John D. Rockefeller	180

All of these stockholders, with the possible exception of the Warings and Logans, were at this time, or became shortly after, in the course of this first period of the combination, stockholders of the Standard Oil Company. (Petition, vol. A, p. 13; Ans., vol. A, p. 477; John D. Rockfeller, vol. 16, pp. 3139, et seq. Defendants' Exhibits 386, 387.)

On January 18, 1872, this company entered into a contract with the Pennsylvania Railroad. (Exhibit 2 to petition, vol. A, p. 116.) It is admitted (ans., p. 476) that this contract was entered into, but it is averred in the answer that it never went into effect or became operative, and that no oil was ever shipped thereunder. It is doubtless true that this particular contract was not regarded as in effect after the repeal of the charter of the South Improvement Company, but the contract itself shows the purposes and plans of the South Improvement Company, and throws

much light on the nature and practices of the subsequent combination effected by the Standard interests. The testimony is very clear that rebates substantially equal in amount to those provided in this contract were subsequently paid, and divisions between the railroads made, which rebates and discriminations were continued until Rockfeller and his associates had forced the principal refiners into the combination.

The detailed statement of this contract, the rebates provided thereby, and the testimony showing the rebates of this early period are fully set forth in volume 2 of the brief. In substance, this contract, while made with the Pennsylvania Railroad, provided for a division between all the railroads of the oil traffic of the South Improvement Company from the oil regions to the seaboard, and similar contracts were undoubtedly made with the other railroads. It provided for rebates to the South Improvement Company on all oil transported by the railroads, not only for the South Improvement Company but *for all other shippers*, of from 25 to 50 per cent of the total rate. For example, the rate on crude oil from the oil regions to Cleveland and Pittsburg was to be 80 cents a barrel and the rebate 40 cents. It was provided that the charges to all other parties were to be the full tariff rates unless such parties could furnish an amount of traffic equal to that furnished by the South Improvement Company and also possessed and used "works, means, and facilities for carrying on and promoting the petroleum trade equal to those" of the South Improvement Company. The

testimony shows that no other shippers possessed any such traffic or facilities, and therefore none could get rates lower than the tariff rates.

Again, it was provided that the railroads were to cooperate, as far as they legally could, with the South Improvement Company to maintain its business against loss and injury by competition, and that they would lower and raise the gross rates of transportation, so far as they legally might, "for such times and to such extent as may be necessary to overcome such competition." (See art. 4 of contract, vol. A, p. 122.)

This contract, although made with great secrecy, became known in the oil regions, and intense excitement followed; public meetings were held in various places; committees were sent to the legislature of Pennsylvania and to Congress; and the final result was the repeal of the charter of the South Improvement Company. Mr. Archbold, now vice-president of the Standard Oil Company, was one of the most bitter opponents of this contract. (Vol. 17, p. 3447.)

It clearly was the intention to use this contract to force into the combination such refineries as the parties desired and to crush out the balance. Mr. Rockefeller testified that it was the intention to bring all the refiners in (vol. 16, p. 3145), and the same claim was made in a manifesto sent out by the Standard Oil Company and other parties in the South Improvement Company (brief, vol. 2, pp. 166–9). Even if such was the intention, it clearly shows the purpose of monopoly at this early date. Mr. Archbold, how-

ever, testified that he denounced the contract because of its exclusive character (vol. 17, p. 3447), and Mr. Rockefeller admitted that he did not disclose to certain refiners whom the Standard bought out at this time the fact that they had a right to come in under this contract (vol. 16, pp. 3146–3147).

No doubt during this period the great instrument by which these defendants were enabled to combine the principal refineries and to crush out the balance was discriminating rates received from the railroads, and the Government proved that immediately after making this South Improvement contract the rates were enormously raised and that for years the Standard Oil companies received rebates not only on their own oil but on the oil of the independents; that they got possession of all railway terminals in New York where oil was delivered, thereby enabling them to levy tribute upon the business of the independents and to control the rest; that they entered into pool agreements with the railroads dividing up the traffic whereby the Standard obtained rebates on all oil shipped, the contracts providing that other shippers should pay the full rates; that owing to these rebates suits were brought against some of the defendent companies and the Pennsylvania Railroad Company to oust them from the State of Pennsylvania. Individual defendants, John D. Rockefeller, William Rockefeller, Henry M. Flagler, and some of their associates, were indicted for conspiracy to monopolize commerce in oil in Pennsylvania. The proof of these transactions is set forth in volume 2 of this brief, pages 171–196.

ACQUISITION OF CLEVELAND REFINERIES.

The next step in this combination was the acquisition by the Standard Oil Company of the principal refineries in Cleveland. To prepare for this acquisition it is seen that the Standard had gone into the South Improvement Company, and Mr. Rockefeller testified that he had acquired large additional capital for the Standard Oil Company of Ohio by taking in various men of means. It appeared on cross-examination that these men also had influence with the railways. For instance, W. H. Vanderbilt, president of the New York Central, became a stockholder of the Standard Oil Company; also Mr. Amasa Stone, who was managing director of the Lake Shore; Mr. Stillman Witt, who was a director in the Big Four; Mr. T. P. Handy, who was also a director in the Big Four; and Mr. P. H. Watson, who was a special representative of Commodore Vanderbilt and shortly afterwards president of the Erie Railroad. (Vol. 16, pp. 3156–3158.)

Mr. Rockefeller testified on direct examination that he acquired about a dozen refineries in Cleveland early in 1872. On cross-examination he was shown a list and admitted the acquisition of 17, mostly at that time, but a few later during the seventies. (Vol. 16, pp. 3159–3161.) In addition to the acquisition of these 17 refineries, it appears on cross-examination of Mr. Rockefeller that the Standard Oil Company of Ohio in 1876 entered into a contract with Scofield, Shurmer & Teagle, of Cleveland, limiting the busi-

ness of that concern to 85,000 barrels of crude petroleum per year and providing that the owners were not to become interested in any other refineries; that a like contract was made with the Pioneer Oil Company (vol. 16, pp. 3204–3212); that suit was brought to enforce this contract with Scofield, Shurmer & Teagle in 1880. Certified copies of the bill and answer, with the contracts attached, and the affidavits of Mr. Rockefeller, Mr. Flagler, and Mr. Payne were introduced in this case. (Petitioner's Exhibits 1001–1006.) Mr. Rockefeller, on cross-examination, could not name one single competing refinery left in operation in Cleveland. Mr. Emery says the Standard acquired about 18 Cleveland refineries in 1872, and only 3 independents remained. (Emery, vol. 6, pp. 2625–2627.)

It is very significant that the acquisition of all these refineries in Cleveland followed immediately the consummation of this South Improvement contract with the railways, and that none of these refiners were informed that they could have the benefit of this agreement. (Rockefeller, vol. 16, pp. 3146–3147.)

COMBINATION OF OTHER REFINERIES PRIOR TO THE TRUST AGREEMENT OF 1879.

We have seen that it was announced, in defending the South Improvement Company, that the intention of the organizers of that company was to unite all the refiners in a general stock company. (Emery, vol. 6, p. 2620.) It appears that there was such opposition to the South Improvement plan that the organizers modified it to the extent of making a

secret combination of stockholders' interests in the leading concerns, which resulted in the trust agreement of 1879, such leading concerns in turn buying outright many others. This combination of leading concerns was accomplished in the following manner: After the acquisition of the Cleveland refineries, Mr. Rockefeller and his associates turned their attention to those in Pennsylvania and at the seaboard. They went to the owners of a large number of refineries situated in Brooklyn, New York, Philadelphia, Baltimore, Parkersburg, western Pennsylvania, and other places and acquired stock or partnership interests. In the case of the larger concerns this was done by exchanging stock in the Standard Oil Company for stock in these companies.

By these means the number of stockholders of the Standard Oil Company of Ohio was increased from time to time by the addition of previous owners of refining concerns. (See Defendants' Exhibits 257 and 386.) The stocks of these formerly independent manufacturing companies thus acquired were put in the names of various individuals who held them for the benefit of the stockholders of the Standard Oil Company of Ohio. This arrangement continued until 1879, when all the stocks thus held were turned over to Vilas, Keith & Chester, as trustees, for control and distribution. (Defendants' Exhibit 257.)

Mr. Rockefeller and Mr. Archbold were placed upon the stand by the defendants, and Mr. Rockefeller undertook to convey the impression that the property

of these refiners was bought for the benefit of the stockholders of the Standard Oil Company. As a matter of fact, on cross-examination it clearly appears that, with the exception of the refineries in Cleveland, not one single property was conveyed to the Standard Oil Company of Ohio, but they were all acquired through stock or partnership interests or were bought up by other concerns which were so acquired. Take, for instance, Charles Pratt & Co., of New York, a corporation having a refinery situated at Brooklyn. Charles Pratt, Horace Pratt, and Henry H. Rogers were its stockholders. They exchanged their stock for stock of the Standard Oil Company, thereupon becoming stockholders in the Standard Oil Company of Ohio, turning over their stock in the Pratt Company to be held for the benefit not of the old stockholders of the Standard Oil Company, or, in fact, any definite individuals, but for all the stockholders of this company as they should from time to time come into the combination. (Cross-examination of Rockefeller, vol. 16, pp. 3151–3154, 3161–3178.)

In this way between 1873 or 1874 and 1879 Messrs. Rockefeller, Archbold, Rogers, Flagler, and Payne made arrangements with all of the leading refiners and pipe-line owners whose concerns were situated in New York, western Pennsylvania, Ohio, Philadelphia, and various other places. In some cases, where the previous concerns were partnerships, as a part of the deal of acquisition new corporations or limited partnerships (which, under the laws of

Pennsylvania, have stock) were organized, stock issued in lieu of the partnership property, and this stock turned over to be held for the benefit of the stockholders of the Standard Oil Company in the same manner as with Charles Pratt & Co.

Among the larger concerns thus acquired by exchange of stocks were Charles Pratt & Co., Devoe Manufacturing Company, Long Island Refining Company, Imperial Refining Company, of Oil City; Atlantic Refining Company, of Philadelphia; Warden, Frew & Co., Lockhart & Frew, Standard Oil Company of Pittsburg, Acme Oil Company (which was organized to take the property of Bennett, Warner & Co., and Porter, Moreland & Co.), the Camden Consolidated Oil Company (which took in two other concerns), the American Transfer Company, and the United Pipe Lines. (See Rockefeller, vol. 16, 3161–3178; Defendants' Exhibits 257 and 386.) These were the most important concerns in the oil business of the United States.

In other cases money was paid for stock interests, which money was acquired from the earnings of these various concerns which had been from time to time thus combined. (Archbold, vol. 17, pp. 3467 and 3483.) We shall later refer to other concerns whose properties were bought outright by companies thus controlled by the combination through stock interests.

Prior to 1879 the stocks thus acquired were held in the hands of various people, frequently the original owners, for the benefit of all the stockholders of the

Standard Oil Company. By these various combinations, by April 8, 1879, the stock list of the Standard Oil Company of Ohio had grown from 3 or 4 to 37 stockholders, several of which stockholders were firms with several copartners. These men had united these stock interests in a combination, as we have described, all of these concerns being separate, competing concerns in producing, transporting, manufacturing, and selling petroleum and its products. It is also noteworthy, as an evidence that this was a combination of competing companies, and not a mere purchase by one of others, that, as Mr. Rockefeller and Mr. Archbold testified, most of the concerns which were brought together continued to be operated and managed by the former owners.

TRUST AGREEMENT OF 1879.

On the 8th day of April, 1879, a trust agreement was entered into (presented in full as Appendix A hereto) between all the stockholders of the Standard Oil Company of Ohio, some 37 in number, whereby the stocks of 30 separate companies named in said trust agreement, and other companies not specifically therein named but described under general terms, were turned over to Vilas, Keith & Chester, trustees, to hold, control, and manage the same for the benefit of the various persons therein named, to wit, the 37 individuals and copartnerships who had become from time to time, as we have shown, stockholders of the Standard Oil Company of Ohio. These parties shared in the trust property in the same proportions

as their stock interests in the Standard Oil Company. The trustees further agreed "as soon as they can conveniently do so" to divide and distribute the said stocks between the said persons according to their respective proportions and interests. It is not clear whether they were actually distributed before entering into the trust agreement of 1882 or not. If they were, it was probably shortly before that trust agreement. The stockholders individually signed the trust agreement of 1882, as well as Vilas, Keith & Chester as trustees. Mr. Rockefeller first testified that they were distributed, but afterwards said that they were turned over by Vilas, Keith & Chester to the trustees in the trust of 1882. (Vol. 16, p. 3178.) It is entirely immaterial whether they were actually distributed or not, they were held for the benefit of the various owners. This trust agreement of 1879 was signed also by various individuals who were not stockholders of the Standard Oil Company but who had theretofore held the stocks of these various subcompanies as trustees for the benefit of the stockholders of the Standard Oil Company of Ohio.

Between 1879 and 1882 various additional concerns were acquired in the same manner as theretofore, except that in these cases payment therefor was made principally in cash by Vilas, Keith, & Chester, trustees, out of the profits of the Standard Oil Company or the other companies. (Archbold, vol. 17, pp. 3467, 3483.) The additional stocks so acquired were held by Vilas, Keith & Chester, as trustees, for the benefit of the stockholders of the Standard Oil Company of Ohio.

FORM OF THE ACQUISITION OF COMPETING CONCERNS.

It appears that great effort was made by counsel for the defendants to show by Mr. Rockefeller and Mr. Archbold that these various properties, control of which was acquired before 1882, were purchased and many of these companies organized by what Mr. Archbold terms "Standard Oil interests." He does not definitely define "Standard Oil interests," because it was an intangible combination. An exhibit showing a list of these various companies which went into the trust of 1882, including, of course, all of those in the trust of 1879 was introduced in evidence, being Defendants' Exhibit 282. This exhibit purports to show the various companies, when organized, whether organized by Standard Oil interests, the [illegible] ties acquired, etc. On cross-examination it appeared that between 1872 and 1882 none of the property of any of these companies was constructed or even purchased by the Standard Oil Company of Ohio, or by the stockholders thereof, or by any company affiliated with the Standard Oil Company. It did appear that various of the companies were organized by (as Mr. Archbold calls it) "Standard Oil interests," but they were organized as a part of the scheme of combination to take over properties which had previously belonged to partnerships or individuals, and their stock was acquired for the benefit of the stockholders of the Standard Oil Company of Ohio in the same way we have described. (Cross-examination of Mr. Archbold, vol. 17, pp. 3342–3378.)

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It appears also by the testimony of Mr. Rockefeller and Mr. Archbold that all of these concerns so acquired (through stock ownership or through companies organized to take them over) had built up an independent business, and were competing with the Standard Oil Company and with each other at the time of such acquisition.

We now propose to take up one by one the principal concerns which were brought into the combination between 1872 and 1880, showing the manner in which they were acquired or controlled, and the extent to which the former owners became parties to the combination. All except one of the concerns named below continued their separate corporate or partnership existence after the combination, and most of them were specifically named in the trust agreement of 1879. The concerns listed fall into three classes: (1) Those in which the stockholders or former owners received in exchange for their stock or property stock in the Standard Oil Company of Ohio; (2) those in which the former owners were taken into the combination by retaining or receiving a minority interest in the corporations, while the stockholders of the Standard Oil Company of Ohio took the remaining stock; (3) those in which stock was acquired by Standard interests, but in which there is no evidence that the former owners were brought into the combination.

Cases of the first class.

Clark, Payne & Co.—This was a partnership, the members of which were the defendant Oliver H.

Payne, James H. Clark, and John Huntington, owning a refinery at Cleveland. It was the first concern taken into the combination subsequent to the organization of the Standard of Ohio. In exchange for the property of this firm, which was bought outright, Payne and Huntington received stock of the Standard of Ohio; and Mr. Payne has continued to be a large stockholder in the Standard to the present time. (Rockefeller, vol. 16, pp. 3064, 3160.)

Long Island Refining Company.—This was a corporation owning a refinery and dock property at Long Island City, N. Y. The stock was owned by Josiah Macy, jr., W. T. Wardwell, and William Henry Macy All three received stock of the Standard of Ohio in exchange for their stock; and thereupon their stock in the Long Island Refining Company became the property of the stockholders of the Standard of Ohio and was subsequently turned over to Vilas, Keith & Chester by the agreement of 1879. (Rockefeller, vol. 16, pp. 3075, 3172.) The Macys and Wardwell were stockholders of the Standard in 1879. (Defendants' Exhibit 257, Appendix A hereto.)

Devoe Manufacturing Company.—This company owned a plant on Newtown Creek, Long Island, and was engaged in canning oil for export trade. The stock was owned by Josiah Macy, jr., and other Macys. At first the stockholders of the Standard of Ohio acquired for their use in the neighborhood of half, and later the balance, of the stock. The Macys in the meantime remained minority stockholders of the Devoe Manufacturing Company; and at the

same time Josiah Macy became a stockholder of the Standard of Ohio. Stock in this company was covered by the Trust of 1879. (Rockefeller, vol. 16, pp. 3076, 3162; Defendants' Exhibit 332.)

Atlantic Refining Company, Standard Oil Company of Pittsburg, Warden, Frew & Co.—The stock of the Atlantic Refining Company and the Standard Oil Company of Pittsburg was owned by Warden, Frew & Co. and Lockhart & Frew, the individual members of which firms were Mr. Warden, Mr. Frew, and Mr. Lockhart. The stock of these two companies and the property and business of Warden, Frew & Co. was acquired by the stockholders of the Standard Oil Company of Ohio by the exchange of stock; and these three men immediately became stockholders of the Standard Oil Company and remained such. The stock or interest in these three concerns was put into the Trust of 1879. (Rockefeller, vol. 16, pp. 3166–67.)

Charles Pratt & Co.—This was a corporation having a large refinery and docks at Brooklyn, N. Y. Its stock was owned by Charles Pratt, Henry H. Rogers, and Horace Pratt. The stockholders of the Standard of Ohio acquired the stock of the Pratt Company in exchange for stock of the Standard of Ohio; and Charles Pratt, Henry H. Rogers, and Horace Pratt immediately became stockholders of the Standard of Ohio, and remained so thereafter. This company's stock was also covered by the Trust of 1879. (Rockefeller, vol. 16, pp. 3079, 3151–53, 3167.)

Acme Oil Company.—This company was organized to take over the property of Bennett, Warner & Co.,

and Porter, Moreland & Co. Mr. Bennett was one of the principal owners in the first concern, and John D. Archbold one of the principal owners in the second. Mr. Archbold became a stockholder in the Standard of Ohio in exchange for his interest; and Mr. Bennett held a minority interest in the Acme. (Rockefeller, vol. 16, pp. 3083, 3168–71; Defendants' Exhibit 306.)

Camden Consolidated Oil Company.—This was a corporation organized in 1875 to take over the business and property of J. N. Camden & Co., of Parkersburg, W. Va., and another refinery at the same place called the Pool refinery. J. N. Camden and W. P. Thompson, the former owners, exchanged the stock of this company for stock of the Standard Oil Company of Ohio, and for many years thereafter remained stockholders of that company. The entire stock of this company was placed in the Trust of 1879. (Rockefeller, vol. 16, pp. 3091–92, 3174–75.)

Imperial Refining Company.—This was a partnership owned by J. J. Vandergrift and John Pitcairn. When the concern was acquired, about 1873, these two men immediately became stockholders of the Standard of Ohio. The property was later put in the name of the corporation, the stock of which was held for the benefit of the stockholders of the Standard Oil Company of Ohio. (Rockefeller, vol. 16, pp. 3078–79, 3163–65.)

Vandergrift & Forman—United Pipe Lines.—Vandergrift & Forman was a partnership, operating the United Pipe Lines, in which the stockholders of the Standard of Ohio acquired a one-third interest about

1874. The Vandergrift was J. J. Vandergrift, who became a stockholder of the Standard of Ohio at that time. A corporation of the same name was organized in 1877, and part of its stock appears in the Trust Agreement of 1879. (Defendant's Exhibits 341, 341 A.)

American Transfer Company.—This was a pipe-line corporation, of which J. A. Bostwick was the principal stockholder. When, in 1874, the stock of this concern was acquired by the stockholders of the Standard, Mr. Bostwick immediately became a stockholder in the Standard. The entire stock of this company was put in the Trust of 1879. (Rockefeller, vol. 16, pp. 3093, 3175.)

The evidence shows that the concerns above named were the largest concerns which the Standard combined, and all were combined by exchange of stock of the Standard for the stock (or in one case the property) of the former owners, although in two or three cases minority interests were also retained by the former owners.

Cases of second class.

Keystone Refining Company.—The firm of Pickering, Chambers & Co. owned a refinery at Titusville, Pa., and was doing business in competition with the Standard. In 1876 the Keystone Refining Company was organized to take over the property and business, a majority of its shares was acquired by the stockholders of the Standard of Ohio, and the former owners of the property retained a minority interest in the new corporation until 1882. (Archbold, vol. 17, pp. 3361–3362; Defendants' Exhibit 326.)

Empire Refining Company (Limited).—This was a corporation organized in 1878, and having a refinery in Brooklyn, N. Y., the stock of which was originally owned by nine individuals. In 1880 about eighty per cent of its stock was acquired for the benefit of the stockholders of the Standard of Ohio; A. K. Bolan and Henry B. Riggs, former owners, retained a minority interest, and continued to operate the business until 1891. (Archbold, vol. 17, pp. 3369–3370; Defendants' Exhibit 334.)

Baltimore United Oil Company.—This company was organized in 1877 to take over a number of refineries at Baltimore which previously had been independent and competing with each other. The principal negotiations were conducted by J. N. Camden, who, as we have seen, became a stockholder of the Standard of Ohio in 1875. J. N. Camden, as trustee for the stockholders of the Standard of Ohio, held a little over five-sixths of the stock of the new company until 1879, after which the same stock was transferred to Vilas, Keith & Chester, trustees. The former owners of the principal refineries which were taken over by the Baltimore United Oil Company became minority stockholders of that company. (Farquharson, vol. 5, p. 2203–2204; Rockefeller, vol. 16, p. 3175; Defendants' Exhibit 319.)

H. C. Van Tine & Co. (Limited).—This company was organized in 1879 by H. C. Van Tine, John D. Archbold, and F. Q. Barstow, to take over the Diamond Works, at Allegheny, Pa., which had theretofore been conducted by Mr. Van Tine. The stock-

holders of the Standard took a three-quarters interest in the stock and Mr. Van Tine the balance. (Defendants' Exhibits 282 and 338, vol. 19, pp. 681, 805.)

Chess Carley Company.—The Chess Carley Company was originally a partnership, having a refinery at Louisville, Ky., and doing a marketing business throughout the Southern States. About 1873 the stockholders of the Standard of Ohio acquired a half interest in the partnership, the former owners retaining the balance. In 1881 a corporation of the same name was organized, which for years continued the business as it had originally been conducted; F. D. Carley received half of the stock of the corporation, and Vilas, Keith & Chester received the other half for the benefit of the stockholders of the Standard of Ohio. (Defendants' Exhibits 324 and 324–A; Rockefeller, vol. 16, pp. 3077, 3163; Archbold, vol. 17, p. 3359.)

Consolidated Tank Line Company.—This corporation was organized in 1878 to take over the business and property of Alexander McDonald & Co., formerly an independent marketing concern with headquarters at Cincinnati and doing business in Southern and Western States. Alexander McDonald received a large minority interest in the new corporation; the stockholders of the Standard of Ohio acquired a half interest; and in this manner it was brought into the combination. Stock in this company was placed in the Trust of 1879. (Archbold, vol. 17, pp. 3360–61; Defendants' Exhibit 325.)

Waters-Pierce Oil Company.—The Waters-Pierce Oil Company was organized as a corporation under the laws of Missouri in 1878, by W. H. Waters, H. C. Pierce, H. A. Hutchins, F. D. Carley, and W. P. Thompson, and succeeded to the business of Waters, Pierce & Co. (presumably a partnership), which did a marketing business only. The Standard interests acquired, for cash, 40 per cent of the stock of the new corporation, and Chess Carley & Co. 20 per cent, the former owners retaining the balance of the stock. In 1882, when its stock was increased, the Standard Oil trustees acquired their proportion of the additional shares, maintaining their 40 per cent. (Archbold, vol. 17, p. 3279; Defendants' Exhibit 339.)

Maverick Oil Company.—This corporation was organized in 1877 to take over the property and business of the firm of Carter, Windsor & Co., of Boston. It did a marketing business throughout New England. Mr. Carter and Mr. Windsor, former owners, obtained a large minority interest in the new corporation, the remainder being held for the benefit of the stockholders of the Standard Oil Company of Ohio and subsequently turned over to Vilas, Keith & Chester, trustees. (Archbold, vol. 17, pp. 3357, 3363; Defendants' Exhibit 327.)

Beacon Oil Company.—This corporation was organized in 1880 to take over the business of Kidder, Vaughan & Co., a partnership having a small refinery and oil yards in Boston, and also doing a jobbing business in certain sections of New England. The stockholders of the Standard of Ohio acquired a majority

of the stock. Benjamin Vaughan and A. A. Vaughan, former owners, were among the five incorporators of the new company and became minority stockholders in it. (Archbold, vol. 17, p. 3357; Defendants' Exhibit 320.)

American Lubricating Oil Company.—This company was organized in 1878 to take over the business of a firm of the same name and the business of the Mica Axle Grease Company, both having properties located at Cleveland and doing a general lubricating oil business. A Mr. Jennings, one of the principal owners in one of the former concerns, was brought into the combination by receiving a minority of the stock in the new corporation, the balance being held for the benefit of the stockholders of the Standard of Ohio and subsequently placed in the Trust of 1879. (Rockefeller, vol. 16, pp. 3084, 3173; Defendants' Exhibit 318.)

Eclipse Lubricating Oil Company (Limited).—This limited partnership was organized by Standard interests and Thomas Brown in 1878, and took over the Eclipse Oil Works at Franklin, Pa., which had formerly been owned by a large number of individuals at Franklin and in that neighborhood, including Mr. Brown. Its business was that of manufacturing lubricating oils. Some of the original owners retained an interest in the new company, especially Mr. Brown, the balance being held for the stockholders of the Standard and subsequently placed in the Trust of 1879. (Archbold, vol. 17, pp. 3368–69; Defendants' Exhibit 333.)

Vacuum Oil Company.—This is the same corporation which is a defendant in this case. At the time, 1879, of the acquisition of stock in this company for the benefit of the stockholders of the Standard of Ohio it was engaged in the manufacture of lubricating oils at Rochester, N. Y., and to an extent doing business in competition with the Standard. H. B. Everest and C. M. Everest, two of its principal former stockholders, retained a minority interest in the Vacuum, and were thus brought into the combination, and the business was conducted as before. (Archbold, vol. 17, p. 3370; Defendants' Exhibit 1.) The Everests are still large stockholders of the Standard.

Galena Oil Works (Limited); Signal Oil Works (Limited).—The business of the Signal Oil Works was the compounding of signal oils; that of the Galena Oil Works, the manufacture and sale of lubricating oils. Both were situated at Franklin, Pa. The Galena owned an interest in the Signal. In 1879 a majority of the stock of the Galena Oil Works was acquired for the benefit of the stockholders of the Standard Oil Company; the principal former owners, Charles Miller and J. C. Sibley, retained a minority stock interest, which they still hold, in the successor corporation, the Galena-Signal Oil Company, a defendant in this case. (Archbold, vol. 17, p. 3366; Defendants' Exhibits 330, 336, 337.)

Thompson & Bedford Company (Limited).—This is a corporation, organized in 1878 under the laws of New York, which took over the business of the partnership of Thompson, Bedford & Co., jobbers in

lubricating oils, with headquarters in New York. Defendants' Exhibit 331 shows R. J. Thompson and E. T. Bedford to have been the holders of a large majority of its shares upon its organization; that immediately thereafter 80 per cent of its stock was transferred to individuals who from their identity it is evident held the same for the benefit of the stockholders of the Standard of Ohio; and that Mr. Thompson and Mr. Bedford each retained 10 per cent of the stock of the Thompson & Bedford Company (Limited). (Archbold, vol. 17, pp. 3367–3368; Defendants' Exhibit 331.)

Cases of the third class.

There are only a few cases in which the Standard interests, during this period, acquired stock in concerns without taking the former owners in as stockholders of the Standard, or bringing them into the combination by leaving them a minority interest in the original concern. These are:

Sone & Fleming Manufacturing Company, Philadelphia Refining Company.—The Sone & Fleming Manufacturing Company owned a refinery on Newtown Creek, Long Island. The Philadelphia Refining Company owned a refinery at Philadelphia. Both companies were owned by the Empire Transportation Company, which in turn was owned by the Pennsylvania Railroad Company. The stockholders of the Standard Oil Company of Ohio at first acquired a part of the Sone & Fleming Manufacturing Company's stock, and by 1877 owned it all as well as all of the

Philadelphia Refining Company stock. This acquisition was accompanied by a rebate contract between the Standard and the Pennsylvania Railroad Company. (Rockefeller, vol. 16, pp. 3085–86, 3173–74; Defendants' Exhibit 317.)

Producers' Consolidated Land and Petroleum Company.—This company owned a large refinery at Bayonne, N. J. In 1877 a majority of its shares were acquired for the benefit of the stockholders of the Standard of Ohio. It does not appear that the former owners came into the combination. (Rockefeller, vol. 16, pp. 3213–14; Defendants' Exhibit 329.)

Paine, Ablett & Co. (Limited).—This was a limited partnership organized under the laws of Pennsylvania by Silas H. Paine, Job Ablett, and William Ablett in 1878, and acquired the Paine & Ablett refinery at Smiths Ferry, Pa. Shortly after its organization nearly all of its stock was transferred to A. M. McGregor, F. Q. Barstow, and Duncan McIntosh, who represented the Standard interests. It does not appear how, if at all, the former owners came into the combination; presumably this was a purchase of the stock by the stockholders of the Standard Oil Company. Some time later the Excelsior refinery, at Freedom, Pa., was transferred to this company. (Archbold, vol. 17, pp. 3262, 3353; Defendants' Exhibit 314.)

SECRECY OF COMBINATION DURING FIRST PERIOD.

No one can read the testimony of Mr. Rockefeller and Mr. Archbold and the other witnesses (particularly Messrs. Emery, Irwin, Lee, and Lombard) and

not come to a conclusion that this combination during all the years up to 1882 was secret and designed to hold together various competing concerns without actually acquiring their properties, and for the very purpose of securing a monopoly. We now desire to briefly refer to some of this testimony.

In the first place, as already stated, the original owners of the concerns which joined the combination in most cases remained in charge of the business, which tended to conceal the fact that the control had changed hands. In the second place, the parties to the combination denied its existence, or at least concealed its form.

During all of the examinations of these defendants before various committees of Congress, the legislature of New York, masters in chancery in cases pending in Pennsylvania and Ohio, not only did the defendants evade in every possible way showing how these companies were combined prior to 1882, but in many instances swore directly that they were in no way owned, or controlled by, or affiliated with the Standard Oil Company of Ohio, and that they were separate, competing concerns. In all these disclosures this Trust Agreement of 1879 was never made public, and it was not made public until brought into court in this case.

We wish especially to call attention to affidavits made by John D. Rockefeller, Payne, and Flagler in 1881, as showing the secrecy of this combination.

It appears in this case that the Standard Oil Company of Ohio, on the 20th day of July, 1876, entered

into an agreement, signed by Mr. Rockefeller personally, with Scofield, Shurmer & Teagle, whereby the latter company agreed to restrict the output of its Cleveland refinery for a period of ten years and not to engage or become interested in any refineries at any other places. Suit was brought in 1881 by the Standard Oil Company to enforce this agreement. In the answer the defendants set up that the plaintiff (the Standard Oil Company) was endeavoring, by contracts with divers persons, to establish a monopoly in the manufacture of refined oil in the State of Ohio and the United States, and in the affidavits made on a motion to discharge a preliminary injunction they stated that the Standard Oil Company controlled a large number of concerns. Affidavits in that case were made by John D. Rockefeller, Oliver H. Payne, and Henry M. Flagler. These affidavits were introduced in evidence. (Petitioner's Exhibits 1004, 1005, and 1006. The bill and answer are Exhibits 1002 and 1003.)

In Mr. Rockefeller's affidavit he said: "Affiant says the Standard Oil Company owns and operates its refineries at Cleveland, Ohio, and its refinery at Bayonne, N. J.; that it has no other refineries nor any interest in any other refineries, nor does the Standard Oil Company operate or control in the United States any other refineries of crude petroleum; that there are in Ohio, West Virginia, Pennsylvania, New York, and New Jersey a large number of refineries of crude petroleum that are not owned or controlled by said Standard Oil Company, and in

which the said Standard Oil Company has no interest whatever, directly or indirectly, which are now and for years past have been refining crude petroleum and selling it in the open market; that the amount of crude petroleum refined by the said Standard Oil Company does not exceed 33 per cent of the total amount refined in the United States."

It is evident that Mr. Rockefeller very carefully phrased this affidavit to convey the idea that the refiners making the 67 per cent were separate and in no way connected with the Standard Oil Company. As a matter of fact, at that very time the combination, as we have described, controlled nearly all of these refineries and was manufacturing from 90 to 95 per cent of the output of the country, as was admitted by Mr. Rogers in 1879. (Vol. 6, p. 3303.)

Mr. Flagler's affidavit was very similar to that of Mr. Rockefeller. The affidavit of Mr. Oliver H. Payne was even more specific. He said: "Nor is it true—as stated by John Teagle—that the Standard Oil Company, directly or indirectly through its officers or agents, owns or controls or has control of the works formerly owned by Warden, Frew & Co., Lockhart, Frew & Co., J. A. Bostwick & Co., Charles Pratt & Co., Acme Refining Company, Imperial Refining Company, Camden Consolidated Oil Company, Devoe Manufacturing Company, or the refinery at Hunters Point, N. Y., or any of them." These are the very refineries that Mr. Rockefeller testified in this case had previously been acquired by the "Standard Oil interests."

The purpose of these affidavits is perfectly evident. It was to deny the existence of the combination or common control, which the people at that time believed existed, but which was kept secret.

Again, Mr. Archbold testified in the case of *The Commonwealth* v. *Pennsylvania Railroad Company*, February 20, 1879. (Vol. 6, pp. 3236–3241.) He named Warden, Frew & Co., Charles Pratt & Co., and the Standard Oil Company as competitors of his concern (the Acme Oil Company) although the Acme had actually, from its inception in 1875, been in combination with these very concerns. He also testified before the Hepburn committee of the New York legislature on October 15, 1879. (Vol. 6, p. 3284.) Among other things, he said:

> Q. How long has the Acme Oil Company been one of the Standard Oil Company?—A. The Acme Oil Company is the Acme Oil Company; it is not the Standard Oil Company at all.
>
> Q. How long has it been controlled by or affiliated with the Standard Oil Company?—A. It is an independent organization; it is not controlled or affiliated with the Standard Oil Company at all.
>
> Q. Has it no contract with the Standard Oil Company?—A. It has no contract with the Standard Oil Company.
>
> * * * * *
>
> Q. Is the stockholding interest substantially the same?—A. I would not say that it was substantially the same.
>
> Q. Is a controlling interest of the Acme Oil Company owned by those who are connected

with the Standard Oil Company?—A. I could not say without reference to the books of the company.

Q. You don't know?—A. No.

It is perfectly evident that he did know that the stockholders were the same and that it was in the combination. Nearly all the stock of the Acme Oil Company was held at that time by Vilas, Keith & Chester for the benefit of the stockholders of the Standard Oil Company. (Defendant's Exhibit 306.)

Mr. Rogers testified before the Hepburn committee on October 14, 1879. (Vol. 6, p. 3302.) It will be remembered that the first trust agreement was made April 8, 1879, and that the Hepburn committee was trying to find out the mutual ownership and control of these concerns. He admitted that there was some "understanding," but the testimony will show how he undertook to cover up the absolutely complete control exercised over all of these businesses under the trust agreement of 1879. We quote from his testimony as follows:

Q. Was there a sale or transfer made of your business to the Standard Oil Company, by which practically the Standard Oil Company really controlled your business?—A. I will answer this much of the question by saying that the Standard Oil Company does not practically control our business.

* * * * *

By the CHAIRMAN:

Q. Was not your firm taken in with the Standard Oil Company upon some agreed

basis or arrangement, whether you regard it as a purchase or transfer or not?—A. We worked in harmony with the Standard Oil Company for a number of years.

Q. Upon an agreed basis of general business?—A. Our interest was in common to a certain extent.

By Mr. STERNE:

Q. Have you a written contract with the Standard Oil Company?—A. I can not answer, sir.

Q. Have you any contract of any kind with the Standard Oil Company?—A. I think I have an agreement written, but a matter entirely personal—that was written with some of the people connected with the Standard Oil Company—some of the officers, but not with the Standard Oil Company proper.

Q. With some of the officers of the Standard Oil Company?—A. Of a personal nature.

Q. By which they guaranteed you a certain profit per year?—A. No, sir.

Q. By which they guaranteed a certain proportion of business per year?—A. No, sir; it does not relate at all to the transportation business; it is a matter personal; it is not connected with this business, as I understand it.

Q. Is not connected with the oil business?—A. It is not connected with the transportation business.

Q. Are you yourselves refiners?—A. Yes, sir.

Q. Does it limit the amount of refining that you are to do?—A. This does not relate to

that at all; it is a private paper between some of the gentlemen connected with the Standard Oil Company and myself. You asked me if I had any contract; I say that I have a contract—that is, of a personal nature—with some of the members of the Standard Oil Company.

Q. Which you say does not relate to the transportation of oil or refining?—A. It does not relate to the transportation of petroleum or refining.

Q. Does not relate to the sale of petroleum?—A. No, sir.

Q. Has your firm any contract with the Standard Oil Company?—A. That I can not answer.

Q. What member of your firm would be able to answer that?—A. I think Mr. Pratt would, if he were here.

Q. When was it that your firm began to work in harmony with the Standard Oil Company?—A. I can not say exactly how long ago; seven or eight years ago we got up a refining association here. That was the first; and then we got up another, and we got up another, and we have always been trying to get into some relations with all the refiners so that we might make some money out of the business.

Q. Had you difficulty before you entered into relations with the Standard Oil Company to make money out of the business?—A. The competition was always very sharp, and there was always some one that was willing to sell goods for less than they cost, and that made

the market price for everything. We got up an association and took in all the refiners, until some of them went back on us, and that would break up the association; we tried that two or three times.

Q. Then finally you entered the Standard Oil arrangement?—A. Then we made an alliance or association with some of the refiners about here, and it was more successful.

Q. What are the refiners about here with whom that alliance was made, and are they or are they not all of them covered by the Standard Oil arrangement?—A. They would come in and then they would go out. There is no refiner that I know of, with one exception, about New York but what has been in the association.

Q. What are the refiners that are now in association of the Standard Oil?—A. The people that are now working in harmony with us comprise about, I should think, 90 or 95 per cent of the refiners.

Q. Now, tell us their names, the leading ones.—A. Some of the leading ones? The Standard Oil Company; Charles Pratt & Co.; the Sone & Fleming Manufacturing Company; Warden, Frew & Co., of Philadelphia; the Standard Oil Company, of Pittsburg; the Acme Oil Refining Company, of Titusville; the Imperial Refining Company, of Oil City; the Baltimore United Oil Company, of Baltimore.

On the next page Mr. Rogers defines what he means by "harmony."

Q. You said that substantially 95 per cent of the refiners were in the Standard arrange-

ment?—A. I said 90 to 95 per cent, I thought, were in harmony.

Q. When you speak of their being in harmony with the Standard, what do you mean by that?—A. I mean just what harmony implies.

Q. Do you mean that they have an arrangement with the Standard?—A. If I am in harmony with my wife, I presume I am at peace with her and am working with her.

Q. You are married to her, and you have a contract with her?—A. Yes, sir.

Q. Is that what you mean?—A. Well, some people live in harmony without being married.

Mr. J. A. Bostwick also testified before the Hepburn committee on October 16, 1879. The committee was evidently trying to find out whether the American Transfer Company was in any way connected with the Standard. He was asked:

Q. Is that pipe one of the pipes that is owned by the Standard Oil Company?—A. No, sir; the American Transfer Company deliver the oil at Salamanca.

Q. Isn't that a part of the Standard Oil Company?—A. No, sir; it is not.

Q. Is it owned or controlled by the same parties?—A. It is owned by different individuals.

Q. Mainly by parties interested in Standard Oil?—A. To a considerable extent. (Bostwick, vol. 6, p. 3315.)

This testimony was given on the 16th day of October, 1879. On the 8th day of April preceding Mr.

Bostwick had signed the trust agreement, containing a statement that the entire capital stock of the American Transfer Company was in trust for the benefit of the stockholders of the Standard Oil Company.

On the next page Mr. Bostwick testifies that "I am working in harmony with the Standard Oil Company, and we do a great many things in a cooperative way." He also testified (vol. 6, p. 3317) that parties who were in harmony with one another did from 90 to 95 per cent of the oil business at this time. But he failed to disclose the form of combination which caused that harmony.

Again, Mr. Cassatt, vice-president of the Pennsylvania Railroad, testified in 1879 to rebates paid to the American Transfer Company, but he repeatedly swore that he did not know that the American Transfer Company was controlled by the Standard Oil combination, and that he could not tell who the stockholders were. (Vol. 20, pp. 16, 39.)

It further appears, by the testimony of Mr. Emery, Mr. Lee, and the other gentlemen, that while the people in the oil regions generally knew there was some sort of a combination, because they felt the effect of it, they did not know exactly the form it took. It is a fact that notwithstanding all of these investigations in the New York legislature, in the courts, and before the committees of Congress, the exact condition of this early combination was never disclosed until the present time, and that the parties undertook to hold out that these concerns were sepa-

rate, competing concerns prior to 1882. This very secrecy is evidence that it was a conspiracy to restrain trade, and not an open purchase of property or stocks, as these defendants are now trying to claim.

PURCHASE AND DISMANTLING OF COMPETING REFINERIES.

In addition to taking into the combination in the manner we have described about 39 different concerns, the subsidiary companies in the combination from time to time between 1872 and 1882 acquired by direct purchase a large number of refineries, pipe lines, and dock properties, some of which were continued and operated, but many of the refineries were dismantled.

Mr. Archbold, on April 28, 1888, testified before the Committee on Manufactures of the House of Representatives that the Standard interests had purchased and dismantled as many as 50 refineries. (Vol. 6, p. 3281.) As already stated, many of the concerns which went into the combination were organized for the purpose of taking over various refineries theretofore existing as separate concerns. For instance, the Acme Oil Company took over two, and afterwards bought up at least four others. (Archbold, vol. 17, p. 3342.) The Baltimore United Oil Company was organized and took over all or nearly all the refineries in Baltimore. (Archbold, vol. 17, p. 3356; Farquharson, vol. 5, pp. 2203–2204.) Mr. Archbold also testified to the purchase and dismantling of a number of refineries at New York Harbor during this period. (Vol. 17, p. 3323.) These latter

purchases were made after 1879, when, as we have shown, the Standard Oil Company already controlled 90 to 95 per cent of the business; yet Mr. Archbold says the acquisitions were made for the purpose chiefly of "succeeding to the volume of business." (Archbold, vol. 17, pp. 3323, 3347.)

Mr. Emery is the oldest refiner in the oil regions of Pennsylvania. On pages 2630–2631 (vol. 6) Mr. Emery gives a list of those refineries which were bought up or in some manner acquired by the Standard Oil Company; he states that in Pittsburg in 1879 there was not one not under the control of the Standard; that along Oil Creek, where there had previously been a large number of refineries, every one was dismantled (p. 2627). See also testimony of Mr. Irwin (vol. 6, pp. 3009, et seq.). Mr. Lee testifies that there were many refineries along Oil Creek in 1872 and 1873, and that they all passed into control of the Standard (vol. 6, p. 3152).

In Appendix D to this volume we give in chronological order a list of all formerly competing concerns acquired by the Standard interests, both during the first period and later, so far as they are mentioned in the testimony; but the evidence shows clearly that many not specifically named were also acquired.

ACQUISITION AND CONSOLIDATION OF PIPE LINES BY STANDARD INTERESTS DURING THE FIRST PERIOD, 1873–1882.

It appears in the testimony in this case that the Standard Oil Company did not originate the idea of

pipe-line transportation or construct the original lines in existence during the years from 1873 to about 1877. These lines were constructed by various individuals and corporations and partnerships. The Standard, however, early realized the importance of getting control of these lines, and as early as 1874 obtained an interest in the most important ones, namely, the United Pipe Lines and the American Transfer Company. It appears also that these associated other pipe lines with them in the pool agreement of 1874. (Petitioner's Exhibit 770.) It is unnecessary here to trace the details of these various acquisitions. It is sufficient to say that by 1877 the Standard interests had obtained control through stock ownership of substantially all of the pipe lines in the oil regions. (Campbell, vol. 6, pp. 3320–3323; Hopkins, vol. 6, 3327; Lee, vol. 6, p. 3153.) It appears that these lines were all consolidated into the National Transit Company about 1881, which company entered the Trust of 1882.

This acquisition of pipe lines was an enormous aid to the Standard Oil Company in securing and maintaining its monopoly of the refining business of the country. For example, when the Columbia Conduit Company, which extended from the oil fields to Pittsburg, was bought up in 1877, the Standard was immediately able to get control of several formerly independent refineries there. The Standard at that time and ever since has used every means possible to get control of or prevent the construction and opera-

tion of independent pipe lines. (Irwin, vol. 6, pp. 3015–3022.)

It appears also that the Standard Oil Company, having secured a system of pipe lines practically throughout the oil region, uniformly opposed the passage of legislation which would facilitate the construction of competing pipe lines, namely, the so-called free pipe-line bill, which would confer the power of eminent domain upon the pipe-line companies throughout the State of Pennsylvania. Bills of this character were introduced in the Pennsylvania legislature year after year from 1870 on, but were not finally passed until 1883. Mr. Lee and Mr. Emery, who were members of the legislature during this period, testified that the Standard as well as the railroads opposed the passage of this legislation, and Mr. Lee states that his reelection was opposed by the Standard Oil interests because of his attitude on this matter. (Emery, vol. 6, pp. 2647–2648; Lee, vol. 6, pp. 3154–3157.)

We shall in volume 2 of this brief give the history of the Standard's later efforts to prevent and destroy competition in the pipe-line business, its acquisition of competing lines and its attempts to acquire others, its attempt to obstruct the construction of pipe lines by purchase of lands across the proposed right of way of such pipe lines, and show clearly its policy to monopolize and control the pipe-line transportation, especially to the seaboard.

II. HISTORY OF THE STANDARD OIL TRUST FROM 1882 TO 1899.

STANDARD OIL TRUST OF 1882.

It appears that from 1879 to 1882 the various corporations composing the Standard Oil combination were held together by the secret trust agreement or arrangement of 1879, which has already been described. It is alleged in the bill, admitted in the answer, and shown by the testimony of Messrs. Rockefeller, Archbold, and others, that on January 1, 1882, a new trust was organized, known as the Standard Oil Trust of 1882, which took in all corporations in the trust of 1879 and others which had subsequently joined the combination, about 40 all told. The bill further alleges that the said 40 corporations and limited partnerships which went into the Trust of 1882 were engaged in purchasing, refining, selling, and shipping petroleum and its products throughout the United States as separate corporations. The answer admits this fact, but denies that they were competing with each other. The testimony shows that they were each engaged in a separate business, and the only reason that they were not competing was that they were held together by the combination previously existing; and it appears that previous to their entry into that combination each of these companies was a competing concern

with the other or was organized to take over concerns previously competing.

By this trust agreement of 1882, which appears in full as Appendix B, all of the stockholders and members of 14 corporations and limited partnerships and a controlling interest of the stockholders and members of 26 corporations and limited partnerships turned over their stock and interests and the control of the business of these corporations and limited partnerships to 9 trustees, of whom certain of the individual defendants were the majority. These trustees were as follows: John D. Rockefeller, O. H. Payne, William Rockefeller, J. A. Bostwick, H. M. Flagler, W. G. Warden, Charles Pratt, Benjamin Brewster, and John D. Archbold.

By this trust agreement it was further provided (Subdivision II, secs. 1–3) that there should be organized as soon as practicable four Standard Oil companies (including the Standard Oil Company of Ohio and the Standard Oil Company of Pittsburg, already organized) whose stocks were all to be held by the trustees, the two additional companies of that name to be organized under the laws of New York and New Jersey. It was also provided (sec. 3) that the trustees might create similar corporations under the laws of other States and Territories; that (secs. 7–9) all property and assets of corporations and limited partnerships in which the Standard Oil trustees held all the stock should be transferred to the Standard Oil Company of the particular State

where such property was situated, and that if from time to time the Standard Oil trustees should acquire all the stock of concerns in which they held then only a part of the stock the property thereof likewise should be so transferred to the several Standard Oil companies. This scheme of conveying the property of all the corporations and limited partnerships to companies known as Standard Oil companies was, however, modified, and was carried out only to a very limited extent. (See amendment to trust agreement executed January 4, 1882, Appendix B.) The Standard Oil Company of New Jersey and the Standard Oil Company of New York were actually organized and took over part of the property in those States. The trustees held all the stock of these two new corporations.

The trust agreement further provided that the stockholders of the 40 corporations should assign their stock in the various corporations and limited partnerships to the trustees and their successors, and the trustees were to issue in exchange therefor trust certificates equal to the appraised value of such stocks and interests. The trustees were also authorized to purchase bonds and stocks of other companies engaged in "business similar or collateral to the business of the Standard Oil companies." (Subdivision II, secs. 9, 10, and 11.)

Subdivision III of the agreement named the trustees and provided for their election and duties. They were to be elected by the trust certificate holders.

Section 15 of this subdivision is important, and is as follows:

> It shall be the duty of said trustees to exercise general supervision over the affairs of said several Standard Oil companies, and, as far as practicable, over the other companies or partnerships, any portion of whose stock is held in said trust. It shall be their duty, as stockholders of said companies, to elect as directors and officers thereof faithful and competent men. They may elect themselves to such positions when they see fit so to do, and shall endeavor to have the affairs of all of said companies managed and directed in the manner they may deem most conducive to the best interests of the holders of said trust certificates.

Section 21 provided that the trust should continue during the lives of the survivors and the survivor of the trustees in this agreement and for twenty-one years thereafter (being thus limited to come within the perpetuity laws), but made provision for a method of dissolution after the expiration of ten years.

It is worthy of note that the trustees adopted by-laws exactly like corporation by-laws and substantially the same as the by-laws adopted by the Standard Oil Company of New Jersey when it became the holding company, controlling these same corporations. (Petition, vol. A, pp. 32, 43; Exhibits 11 and 12 to the petition; 1st answer, vol. A, p. 406; 2d answer, p. 481.) These by-laws provided, among other things, for the election of a president, secretary, treasurer, and executive committee, and for the issuance of

trust certificates. The certificates were substantially the same in form as stock certificates. Dividends were paid on them, and they were bought and sold in open market like stocks. The trustees acted substantially as do directors of a holding company. Mr. John D. Rockefeller was president and Mr. Flagler was secretary.

As of date January 1, 1882, the trustees issued in exchange for the stocks thus transferred to them trust certificates to the par value of $70,000,000. (Petition, vol. A, pp. 33–34; answer, p. 482; Petitioner's Exhibit 250; testimony of Fay, vol. 2, p. 595.) It appears as a matter of fact that the actual value of these stocks so turned into the Trust was $55,710,698.24. (Petitioner's Exhibit 940, being the balance sheet of the Standard Oil Trust for the year 1882.) The list of the parties to whom these certificates were issued appears in the petition. The amount of Trust certificates issued in exchange for the stock of each company held by the trustees appears on page 1 of Petitioner's Exhibit 250.

It further appears that the persons in this list were the ones who signed the trust agreement and were all owners of stocks of these companies so put in the Trust, each owning an equal proportion in all of the 40 companies, including the Standard of Ohio. We have shown how this came about in the acquisition of stocks from time to time and the growth of the stock list of the Standard of Ohio.

The bill alleges and the answer admits that from time to time between 1882 and 1892 (the latter

being the time of the dissolution of the Trust) the trustees continued to acquire additional stocks both in the companies in which they had already owned stock and in additional companies engaged in the same general business. (Petition, vol. A, pp. 34–37; answered, vol. A, pp. 482–83.) The Government proved (Petitioner's Exhibit 257) that between 1882 and 1892 the trustees acquired stock in a large number of corporations, to wit, about 118, including the 40 that originally went into the Trust. Some were created by the trustees, some were previously competing concerns, and some were organized by the trustees to take over previously competing concerns. We will later consider in greater detail these various acquisitions. Some of these 118 companies went out of existence before 1892.

Some of these stocks thus acquired after 1882 were paid for by the issuance of new trust certificates, others in cash out of the earnings of the trustees. Petitioner's Exhibit 250, pages 2 and 3, shows the amount and date of issuance of trust certificates from time to time for the acquisition of these additional stocks; the total amount so issued up to 1892, aside from the original $70,000,000, was $12,225,400. Petitioner's Exhibit 257 is a list of all companies in which stock was acquired, showing the date of the first acquisition of such stock and the amount and method of payment therefor. (See also testimony of Fay, vol. 2, p. 604.)

The trustees also, on May 25, 1887, issued a dividend in trust certificates (corresponding to a stock

dividend) of $15,024,600, so that on March 21, 1892, the date of the dissolution of the Trust, there had been issued trust certificates amounting to $97,250,000, made up as follows:

Original issue	$70,000,000
Issued for stocks and other properties acquired as per Petitioner's Exhibit 250	12,225,400
Stock dividend of May 25, 1887	15,024,600
Total	97,250,000

The trustees continued to manage the business of all these corporations down to the date of the dissolution, on March 21, 1892.

DISSOLUTION OF THE TRUST, MARCH 21, 1892, AND THE LIQUIDATION PERIOD, 1892–1899.

It appears that about 1890 the attorney-general of Ohio brought a suit in the nature of a quo warranto in the supreme court of Ohio to oust the Standard Oil Company of Ohio, on the ground that it had become a party to this trust agreement, and that the said trust agreement was void as tending to monopoly. Issue was joined in this case, and on March 2, 1892, judgment was rendered declaring the trust agreement void, as being in restraint of commerce and a monopolization thereof, and adjudging the Standard Oil Company a party to said trust agreement and ousting it from the right to perform the same in the State of Ohio. (Petition, vol. A, pp. 37–38; answer, vol. A, p. 483; transcript of the Ohio case, record, vol. 22.)

Shortly thereafter, on March 21, 1892, at a meeting of the trust certificate holders, held at the headquarters of the Standard Oil Trust, 26 Broadway, New York, at which meeting, among others, John D. Rockefeller, Henry H. Rogers, Henry M. Flagler, John D. Archbold, and William Rockefeller, the individual defendants, were present, a resolution of dissolution was passed. (Petition, vol. A, pp. 38–39; answer, p. 483.) This resolution provides, among other things, as follows:

> *Resolved*, That the agreement dated January 2, A. D. 1882, commonly known as the Standard Oil trust agreement, and the supplement thereto dated January 4, 1882, be, and are hereby, terminated this 21st day of March, A. D. 1892; and further
>
> *Resolved*, That the affairs of the trust shall be wound up by John D. Rockefeller, Henry M. Flagler, William Rockefeller, John D. Archbold, Benjamin Brewster, Henry H. Rogers, Wesley H. Tilford, and O. B. Jennings, and the survivors or survivor of them, in the following manner.

These liquidating trustees were the same as the previous trustees.

The resolution then provided that the property held by the trust, except stocks of corporations, should be sold and distributed. This amounted to only $1,579,400. (Petition, vol. A, p. 39; answer, vol. A, p. 483.) It then provided that all of the balance of the stocks held by the trustees should be distributed

to the owners of trust certificates in proportion to the respective equitable interests of said owners in the stocks so held in trust, as evidenced by said trust certificates.

At the time the resolution was passed the stocks of 84 companies were held by the Standard Oil trustees, but immediately thereafter, on April 1, 1892, in contemplation of the dissolution, it appears that the stocks of 23 of these companies were transferred by the trustees to the Standard Oil Company of New Jersey, of 11 to the Standard of New York, of 3 to the South Penn Oil Company, of 4 to the Forest Oil Company, of 3 to the Buckeye Pipe Line Company, of 2 to the National Transit Company, of 2 to the Standard of Indiana, of 4 to the Standard of Kentucky, and of 1 to the Ohio Oil Company; within the next month the stocks of 11 were transferred to the Anglo-American Oil Company, an English corporation. This makes 64 corporations in all whose stocks were thus transferred from the trustees to these corporations. (For record of these transfers see Petitioner's Exhibit 253, and testimony of Fay, vol. 2, pp. 598–601.) This left 20 companies the stocks of which remained in the hands of the trustees for distribution, and these 20 companies in turn controlled all of the others which had formerly been in the hands of the trustees. The 20 companies remaining were then and are to-day the principal companies composing the Standard Oil combination. They were as follows:

Name of company.	Where organized.
Anglo-American Oil Co. (Limited)	England.
Atlantic Refining Co	Pennsylvania.
Buckeye Pipe Line Co	Ohio.
Eureka Pipe Line Co	Do.
Forest Oil Co	Pennsylvania.
Indiana Pipe Line Co	Indiana.
National Transit Co	Pennsylvania.
New York Transit Co	New York.
Northern Pipe Line Co	Pennsylvania.
Northwestern Ohio Natural Gas Co	Ohio.
Ohio Oil Co	Do.
Solar Refining Co	Do.
Southern Pipe Line Co	Pennsylvania.
South Penn Oil Co	Do.
Standard Oil Company of Indiana	Indiana.
Standard Oil Company of Kentucky	Kentucky.
Standard Oil Company of New Jersey	New Jersey.
Standard Oil Company of New York	New York.
Standard Oil Company of Ohio	Ohio.
Union Tank Line Co	New Jersey.

They then proceeded to distribute part of the stocks of these 20 companies pursuant to the resolution, but the manner in which this distribution was made and in which the 20 companies were controlled during the next seven years is very suggestive of a schme to evade the effect of the decision of the Supreme Court of Ohio while appearing to comply with it. The fact of the transfer of these 64 companies was evidently a part of that scheme in order to reduce the number of companies, which they undoubtedly intended thereafter to operate in harmony.

There being $97,250,000 of trust certificates of $100 each, the liquidating trustees therefore divided the

stock of each of these 20 companies which the trustees held into 972,500 parts. They made out a form of assignment which assigned to each certificate holder desiring to cancel his certificate $\frac{1}{972500}$ part of the stock of each of the corporations held by the trustees. Upon the receipt of the assignment, if the certificate holder desired he could convert it into the stock of all the subcompanies, but not into the stock of one company without receiving his proportion of all. (For form of assignment, see Petition, vol. A, p 40.)

It appears by the testimony of Messrs. Rockefeller and Archbold that there were a large number of certificate holders at the time of this dissolution; Mr. Rockefeller says a few thousand. (Rockefeller, vol. 16, p. 3186; Archbold, vol. 17, p. 3382.)

The defendants undertook to show that the total number of stockholders in all of the subsidiary companies never exceeded one hundred and made this statement in their brief in the court below. Of necessity the number of equitable owners of shares in the twenty companies was the same as the number of persons who afterwards ultimately received the original issue of stock in the Standard Oil Company of New Jersey in exchange therefor. Defendants' Exhibit 388 shows the persons to whom the stock of the Standard of New Jersey was issued in exchange for the stocks of the twenty subsidiary companies, and the number of shares issued to each. An analysis of this exhibit, in connection with the stipulation with reference thereto (vol. 17, p. 3665), shows that, while the whole 972,492 shares were

originally issued to about 111 individuals (counting trustees for individuals, and estates), a total of 266,623 shares (over 27 per cent) thereof was issued to J. D. Rockefeller and H. M. Flagler, not as representing additional stock owned or acquired by them, but representing trust certificates which came into their hands by the exchange of their personal stock of the Standard of New Jersey with the holders of small amounts of the trust certificates, which practice was followed to avoid the inconvenience to the small holders of first converting their trust certificates into shares or fractional shares of the twenty companies for the purpose of transferring such shares to the Standard of New Jersey. From time to time Messrs. Rockefeller and Flagler converted the small amounts of trust certificates so gathered up into shares of the Standard of New Jersey. This explains the comparatively small number of persons shown by the records of the exchange of stock of the Standard of New Jersey for that of the twenty companies to have been stockholders at the precise moment of such exchange. But, as the trust-certificate holders were the equitable owners of the stock of these companies, and as the evidence in this case shows there were several thousand holders of the trust certificates during this period, the real number of stockholders in the twenty companies of necessity was equally great. Messrs. Rockefeller and Archbold admitted on cross-examination (vol. 16, p. 3186; vol. 17, p. 3382) that the number of trust-certificate holders at the time of dissolution in 1892 was very

large, Mr. Rockefeller saying "a few thousand." There is no evidence that the number was less at any time thereafter. Defendants' Exhibit 1 shows the list of stockholders of the Standard Oil Company of New Jersey in 1907 to have been some five or six thousand, and it is a fair presumption that this number was attained by gradual growth from 1892 to 1907.

As a matter of fact during the next six years, until about January, 1898, the nine trustees who were liquidating the trust and were themselves the largest certificate holders, with members of their immediate families and their immediate associates, were the only ones who liquidated their certificates and obtained stock in the subcompanies, and the large number of small certificate holders did not liquidate their certificates. The result was that these trustees became the holders of the same proportion of the stock of each of the 20 constituent companies, and they, together with Charles W. Harkness, children of O. B. Jennings, a trustee, the estate of Charles Pratt, a former trustee, and O. H. Payne, a former trustee and one of these defendants, during these six years owned and controlled a bare majority of the stock of each of the constituent companies. These individuals did not change their proportion of stock in each of the subcompanies, but if they transferred any stock they transferred the same proportion in all the companies. (Archbold, vol. 17, p. 3295–3296; Petitioner's Exhibits 277–281.) This stock thus trans-

ferred by the trustees to these few individuals was the stock which was voted at the annual meetings of each of the subcompanies, being a bare majority and sufficient to control them. The remainder of the stock of the subcompanies, with the exception of directors' qualifying shares, was held in the hands of the liquidating trustees as such and not voted, so that the large body of equitable owners of the stocks, being the trust certificate holders, had no vote in the management of these companies during the next six years, but their interests were represented by the stock held by the liquidating trustees.

Although the counsel for the defendants now claim that there never was any real dissolution of the combination, but that the same interests own the Standard Oil Company of New Jersey to-day that owned the Trust prior to the time of dissolution, and although it undoubtedly was a fact that the liquidation in this form was made for the purpose of giving the appearance of a dissolution while the companies were actually held together, yet the defendants are estopped, by reason of the record and the testimony of their witnesses, to claim that there was not a dissolution of this Trust in 1892 and that the combination of 1899 was not a combination of separate competing companies.

In the case at bar Messrs. Rockefeller and Archbold swore that the trust agreement was terminated and the Trust dissolved in obedience to the decree of the Supreme Court of Ohio holding it void. (Rocke-

feller, vol. 16, pp. 3184–3185; Archbold, vol. 17, p. 3385.) Mr. Archbold was a little evasive, but in substance he testified that the dissolution took place for the purpose of complying with the decree of the Supreme Court of Ohio, "intending absolutely to dissolve the trust." When asked if the Trust *was* dissolved in good faith, he evaded the question and said he would stand on the resolution. He was then asked:

> Q. Did you intend in good faith to carry out that dissolution?—A. I stand on the record of the resolution itself. (Vol. 17, p. 3385.)

The answer admits the dissolution of the Trust and the liquidation, but denies that the individual defendants continued to manage or control the properties between 1882 and 1899. We call the court's attention to the statement of the answer (Record, vol. A, p. 484), as follows:

> They admit that some of the certificate holders retained their original certificates for a considerable period of time, notwithstanding repeated requests of the liquidating trustees that they should be surrendered, and they further admit that some of those who received assignments of interests in stock of the so-called subsidiary corporations retained them for a considerable period of time and did not present the same and receive therefor certificates of stock of the said so-called subsidiary corporations; but they aver that more than a majority thereof, prior to 1899, surrendered their certificates and received assign-

ments similar to that set forth in said subdivision.

* * * * *

They deny that the defendants each obtained an interest in the stocks of each and all of the companies held by the trustees sufficient in amount to give them the control of each and all of said corporations after the said dissolution, or did so control the said corporations thereafter.

They deny that during the time from 1892 down to January, 1899, the individual defendants herein, who were liquidating trustees, continued to manage the affairs of all said separate corporations, or that they continued to manage the same in violation of law, or that they elected or designated the directors, managers, or officers of all of said corporations.

The Ohio record which was introduced in this case (Rec., vol. 22) shows that in 1897 the attorney-general of Ohio filed a petition in the quo warranto case, claiming that the Standard Oil Company had not obeyed the decree; in substance, that the Trust had not been dissolved, but that the trustees were still exercising control over it. The defendants answered, and Mr. Rockefeller was one of the principal witnesses. He insisted that the Trust was dissolved; that each of the companies was thereafter controlled by its own stockholders, and that each was competing with the other for business. Presumably this defense convinced the court that these companies had been segregated and separated, that each was competing with the other, and

the court therefore dismissed the petition for contempt.

Mr. Rockefeller, when confronted with this testimony in the case at bar, admitted having so testified, and in fact practically claimed that there was competition between the defendant companies during those years. (Vol. 16, pp. 3184–3194.)

Mr. Rockefeller's testimony in the Ohio case was, in part, as follows (vol. 22, pp. 148–49):

> Q. Does the defendant company (the Standard Oil of Ohio) come in competition with any of the original constituent companies in the State of Ohio?
>
> Mr. KLINE. You mean the companies in the Trust?
>
> Mr. MONNETT. Yes.
>
> Mr. KLINE. You mean since 1892; since the decree of the court in 1892?
>
> Mr. MONNETT. Yes.
>
> WITNESS. It sells its goods where it lists or wills.
>
> Q. I now repeat the question. Does it come in competition with any of the constituent companies that were in the Trust or that are now nourishing the trust certificates in the State of Ohio?
>
> Mr. KLINE. I say that question has been answered.
>
> WITNESS. It sells its goods in the open market, wherever it pleases.
>
> Q. If it sells its goods in the open market, wherever it pleases, it is in competition with all other sellers?

Mr. KLINE. And that is what you mean by the answer?

WITNESS. Certainly.

Q. Does one of your constituent companies do business in competition with the Standard Oil Company of Ohio in Ohio?—A. We have no company but sells its goods wherever it wishes to sell them.

Q. Do these constituent companies in Ohio at any one point compete with one another in prices?—A. They all compete with any other companies that are selling oil, our own companies or anybody else's, and choose the markets which are best for them.

Q. Do I understand by that that the salesmen of the constituent companies in the trust compete with the other constituent companies in Ohio, and if so, what ones?—A. The constituent companies of the trust—the trust has no control over any of these companies. The trust has no control whatever over any of these companies. Each of these companies manages its own business just the same as any corporation organized under the laws of any State and is independent.

Again, he was asked:

Q. And all report to one office in New York?—A. And all report to their own stockholders and directors and officers, each to its own.

Q. And also report to you at 26 Broadway, New York?—A. Also do not.

Q. Neither directly nor indirectly?—A. No, sir.

> Q. None of their proceeds or receipts?—A. No, sir; each company has its own separate individuality.
>
> Q. And does not report to the liquidating trustees at 26 Broadway, New York, any of its income?—A. It reports to them whenever it gives to them. It reports to them only in that sense, that if they have any money to divide and place it in the hands of the trustees, they give it to them for that purpose.

Mr. Rockefeller admitted having given this testimony in 1898 in the Ohio case, and does not now deny its correctness.

It appears in the case at bar that during those years the companies did report to the New York office of the Standard. Exhibits which the Government and defendants placed in evidence, and which were shown to have come from that office, show the financial operations of every one of these companies during that period, the prices which they charged, the volume of sales, and various other statistical information.

It is entirely immaterial what position the counsel for defendants will take. If the several companies were competing during these years, as they claimed, in order to comply with the decree of the court of Ohio, then the combination of them in 1899 was illegal. If they were not competing, it was because of an illegal conspiracy during those years to hold them together in defiance of the decree of the supreme court of Ohio and in violation of the Sherman Act.

However, we wish to call the court's attention to the inconsistence between the position taken by the defendants in this case during the early period of taking testimony in New York and their position during the period when Mr. Rockefeller and Mr. Archbold were upon the stand. In the testimony taken during the autumn of 1907 the defendants tried in every way to cover up the details of this liquidation, and the relations which existed between the companies and the manner in which they were controlled during the period of liquidation from 1892 to 1899. (See testimony C. M. Pratt, vol. 1, pp. 27–31, 83–90; W. H. Tilford, vol. 1, pp. 89–184, vol. 2, pp. 622–632; Bensinger, vol. 1, pp. 187.) In the later testimony they undertook as far as possible to convey the idea that the corporations were controlled in the same manner after the liquidation as before.

It appears that up to December 31, 1892, trust certificates to the amount of $49,461,900 had been liquidated, being a trifle over a majority of $97,250,000. (Petitioner's Exhibit 250.) From that time until December 31, 1897, there was no liquidation except two shares.

We now call the court's attention to the individuals who had liquidated these 494,619 shares and obtained their certificates of stock in the subcompanies. They were as follows (Petitioner's Exhibit 256):

John D. Rockefeller, William Rockefeller, Henry M. Flagler, Benjamin Brewster, John D. Archbold,

Henry H. Rogers, Wesley H. Tilford, and Oliver B. Jennings, who were all trustees of the Standard Oil Trust and also liquidating trustees; Oliver H. Payne, who had been a trustee, but not a liquidating trustee, who is one of the defendants, has always been a prominent Standard Oil man and is now a large stockholder and a director; the estate of Charles Pratt, formerly a trustee, whose son, C. M. Pratt, is one of the defendants; Charles W. Harkness, who was one of the Harkness family, a member of which signed the trust agreement of 1882, who was prominent in the Standard Oil management and is a director in the Standard Oil Company to-day; Esther Jennings, Walter Jennings, Helen G. Jennings, Oliver G. Jennings, Annie B. Jennings, and Emma B. Auchincloss, all members of the family of Oliver B. Jennings, above mentioned. All of these persons except Harkness were either trustees or former trustees or members of the family of one of the trustees and closely connected with the management of the Standard. (Rockefeller, vol. 16, pp. 3186 et seq.) These are all of the parties whom the trustees, by the alleged efforts referred to in the answer above quoted, could induce to turn in and liquidate their certificates up to the end of 1897.

When Mr. Tilford was testifying he said that the trustees during the liquidation did not own a majority of the stocks of the subcompanies; that they did not own enough to control, and could not elect directors without getting proxies from other stockholders; that they got proxies from other stockholders and elected directors, or at least somebody did.

(Vol. 1, pp. 110–111.) The court will remember also that in the answer it was denied that these trustees elected the directors and controlled the corporations during the period of liquidation.

It appears that from 1892 to 1897 the sole shareholders in each one of these 20 companies who voted stock at the annual meetings (except directors' shares) consisted of the several persons heretofore named as having canceled these 494,619 certificates prior to December 31, 1892. Such shares held by these individuals constituted a little more than a majority of the total of each of the subcompanies, and all of the remaining stock in each of the companies was held by the Standard Oil Trust, the trustees of which were the same parties. According to the testimony of Mr. Tilford, the stock held by the Standard Oil trustees, representing all the balance of the certificate holders, was not voted in any of the companies; so that these individuals held practically all of the shares which were voted. The trustees themselves held a large majority of the shares that were voted, and evidently had no need of proxies. They did, therefore, control these companies, and the situation remained substantially unchanged down to 1899.

As we have said, about the end of 1897 the State of Ohio commenced proceedings against the Standard Oil Company for contempt in disobeying the decree of the Supreme Court in the quo warranto case of 1892. Thereupon further liquidation of the shares was commenced. (See Petitioner's Exhibit 250.) The success of the importunities, alleged in the

answer, with the several certificate holders to induce them to liquidate seems to have been strangely coincident with the activity of the legal department of the State of Ohio.

The question naturally arises, Why did the parties go through this elaborate scheme of liquidation? It is perfectly evident that it was to make a pretended compliance with the decree of the Supreme Court of Ohio, to avoid the decision in that case that this was a combination in restraint of trade and a monopoly, and to hold out to the public that these companies were separate competing concerns and that the Trust was ended.

It is perfectly apparent why the trustees did not desire the balance of the certificates turned in and the stocks liquidated. It would have scattered the stock of these various companies into the hands of several thousand certificate holders, and there would have been nothing to prevent them from selling stock in one company and not in another, and thereby defeating the scheme of continuing the combination. The defendants in this case were among the men who did make the exchange; they were the principal conspirators in this combination; and they, of course, could rely on one another to act in harmony and to retain the same proportion of stock in each company. It would have been a simple matter to have forced the other trust-certificate holders to make the exchange by stopping the dividends on the trust certificates, but as a matter of fact during all this time the trustees paid dividends on the outstanding trust certificates

not liquidated, and by a curious scheme made these dividends exactly equal to the return which came to the parties who had liquidated their certificates. In order to meet the dividend on the trust certificates for each dividend period, which was ordinarily 3 per cent quarterly, with sometimes 5 per cent additional, the trustees collected from certain of their subcompanies dividends at rates sufficient to make up exactly the amount of money needed for that dividend on the trust certificates still outstanding.

In order to bring about this exact equivalent, very irregular rates of dividends were in some instances declared on the shares of the subcompanies. For instance, on September 15, 1897, the following subcompanies of the Standard Oil Trust paid dividends as follows (see Petitioner's Exhibit 260 B): Buckeye Pipe Line, 40 per cent; Eureka Pipe Line, 12 per cent; Northern Pipe Line, 23¼ per cent; Northern Ohio Natural Gas Company, 1½ per cent. The other companies paid no dividends at this particular time. The sum of the dividends received by the trustees on the shares which they still held in these four companies amounted to $2,389,033.35. They immediately paid out to the trust-certificate holders a dividend of $5 per share, amounting to $2,389,400. The balance of the dividends of these four companies made at that time of course went directly to Mr. Rockefeller and the other individuals who had converted their trust certificates into stock of the subcompanies, and the result was that they got the same return as the trust-certificate holders, namely, the same return that

they would have got if they had retained their trust certificates.

This was the scheme adopted during all the period of liquidation. Since the individuals who had converted their trust certificates into stock held an equal proportion of stock in all the 20 companies, it made no difference to them from which company they received their dividends.

Not only were dividends thus paid on the unliquidated trust certificates, but the small certificate holders were discouraged from liquidating them by the fact that they would have received only fractional shares in the subcompanies and that those companies declined to pay dividends on fractional shares.

III. PRESENT ORGANIZATION OF THE COMBINATION, FROM 1899.

REORGANIZATION OF THE STANDARD OIL COMPANY OF NEW JERSEY AND THE TRANSFER TO IT OF THE SHARES OF THE VARIOUS COMPANIES PREVIOUSLY HELD BY THE TRUSTEES.

As we have before stated, it appears by the record in the case of the *State of Ohio* v. *Standard Oil Company* that on November 8, 1897, the attorney-general of the State of Ohio filed a bill of information in contempt against the Standard Oil Company (Rec., vol. 22) in the Supreme Court of Ohio; that immediately after this, in December, a large amount of trust certificates were turned in and canceled and stock of the subcompanies issued therefor. The testimony was being taken in this case from time to time until March 20, 1899. The attorney-general had also, in 1898, filed a petition in quo warranto against the Buckeye Pipe Line to have its charter forfeited, on the ground that it was also a member of the Trust. Early in 1899 steps were taken to reorganize the Standard Oil Company of New Jersey for the purpose of making it a holding company to hold the stocks previously held by the trustees. This reorganization was apparently the result of these proceedings in Ohio. Mr. Archbold testifies that they did this under legal advice, having found a way by which they thought they could legally hold the stocks in a common ownership. (Vol. 17, p. 3384.)

The charter of the Standard Oil Company of New Jersey was amended and the stock increased to $110,000,000; the $10,000,000 theretofore outstanding was made preferred stock, and was retired shortly thereafter by exchanging it for common stock in the same manner as the stocks of all the other companies were exchanged. (Pratt, vol. 1, p. 84.) This left an authorized issue of $100,000,000 common stock. The charter was amended so as to give the company the power to do all the kinds of business which the subcompanies under the Trust were doing. (Petition, vol. A, p. 42.) By-laws of the company were adopted which were substantially the same as the by-laws of the Trust. (Exhibits 11 and 12 to petition, vol. A, pp. 146, 149.) The liquidating trustees became directors of the Standard Oil Company and were a majority of the board. The seven individual defendants, all of whom except Payne had been liquidating trustees, have ever since been directors of the company.

At or about the time of this reorganization the balance of the trust certificates outstanding was liquidated and the remaining stock of all the subcompanies distributed pro rata to the former holders of such certificates. Thereupon the stock of the subcompanies which had been so liquidated was turned over by the owners thereof, several thousand in number, to the Standard Oil Company of New Jersey as a holding corporation, and $97,250,000 of the common stock of the Standard Oil Company was issued therefor. This amount was the same as the amount of trustees'

certificates issued and outstanding at the time of the dissolution in 1892.

The Government offered in evidence the resolution of the board of directors of the Standard Oil Company of New Jersey (vol. 1, pp. 83 and 84) authorizing the exchange of these stocks. It, among other things, provided:

> On motion, it was unanimously resolved that the president or one of the vice-presidents, and the treasurer or one of the assistant treasurers, be, and are hereby, authorized to issue certificates of common stock of this company and deliver the same, in purchase of the stocks of the following companies, at the rate of one share of common stock of this company for the following fractional shares, to wit:

Then follows a list of the 20 companies whose stocks had theretofore been distributed, being the same 20 companies controlled by the trustees and listed on page 57 of this brief. One of these companies, of course, was the Standard Oil Company of New Jersey itself, whose preferred stock was exchanged. There were, therefore, 19 companies the control of which was by the stockholders transferred to the Standard Oil Company of New Jersey. Most of these transfers of stock were made during the months of June, July, and August, 1899, but a few dragged on for several years thereafter. (Petitioner's Exhibit 282, Defendants' Exhibit 388.) By those means the Standard Oil Company thereupon came into control not only of these 19 companies, but

through them of all the 64 companies which the 19 companies controlled by stock ownership. We have already shown that in 1892, just before the dissolution, the trustees conveyed the stock of 23 companies to the Standard Oil Company of New Jersey itself and the stock of 41 companies to various of the other 19 companies. Nearly all of these companies were still in existence and still so controlled in 1899. The first balance sheet of the Standard Oil Company of New Jersey (Petitioner's Exhibit 2), in addition to the 19 companies acquired in 1899, showed the direct ownership of stocks in 23 other companies, most of them being the same companies whose stocks were transferred to it by the trustees in 1892.

While the Standard Oil Company of New Jersey has several large plants which the combination caused to be conveyed to it, its principal assets are the stocks of the various corporations which it holds. At the date of its last financial statement introduced in evidence, December 31, 1906, its total plant investment and inventory of merchandise was $33,487,365.85, while its stocks, accounts receivable, and a small amount of cash on hand was $338,177,165.79. (Petitioner's Exhibit 9, vol. 7, pp. 28–31.)

COMPANIES NOW OWNED OR CONTROLLED BY THE STANDARD OIL COMPANY OF NEW JERSEY.

Since 1899 the Standard Oil Company of New Jersey has acquired the stocks of a number of corporations and there have been some changes in the stocks held

by the subsidiary companies of the Standard Oil Company of New Jersey. In September, 1907, the Standard Oil Company of New Jersey directly owned stock in 65 companies, and indirectly, through the ownership of stock by the subcompanies, in 49 companies, making a total of 114 companies in this combination, not counting 3 independent companies in which some stock was held, and also not counting certain companies controlled by agreements or secretly controlled, as hereinafter shown.

The following table shows the companies whose stock is thus held by the Standard Oil Company of New Jersey, the total capital stock, and the amount and percentage so held. It also indicates which companies were held by the trustees of the Standard Oil Trust at the time of the dissolution in 1892. It further shows the same information as to stock holdings by the subcompanies. It will be noted that in a few cases two or more companies hold stock in the same corporation, and in giving the proportion controlled in the form of percentage the total holdings have been put together, as explained in notes. It will be seen that in practically every case the Standard owns a majority of the stock, and in a large proportion of cases all of the stock, or substantially all, is held. There are, however, a considerable number of companies where there is a substantial stock interest in other hands.

The decree in this case (sec. 2, record vol. A, p. 526) does not run against all of these 114 companies, as some of them were not named in the petition and others are natural-gas companies, as to which no evidence of combination was presented. Most of the companies not covered by the decree are engaged either exclusively in foreign countries or in the natural-gas business. The decree runs against 37. Of these, 32 are companies whose stocks are held directly by the Standard Oil Company of New Jersey, and are included in the list. Two, namely, the Cumberland Pipe Line Company and the Prairie Oil and Gas Company, are companies whose stocks are held by the National Transit Company, and they are not named in the above list. Three, the Corsicana Refining Company, a partnership, the Manhattan Oil Company, and the Security Oil Company, are held by secret arrangements more fully described hereafter, and are not included in this list.

Of the 37 companies in the decree, all but the following—Corsicana Refining Company, Manhattan Oil Company, Security Oil Company, Colonial Oil Company, Standard Oil Company (California), Standard Oil Company (Nebraska), and Prairie Oil and Gas Company—were in the Standard Oil Trust prior to 1899, and were separate, potentially competing companies in 1899, and at that time were made subsidiary companies of the Standard Oil Company of New Jersey by transfer of their stock to that company. Of the 7 foregoing companies, the

Manhattan and the Standard of California (formerly the Pacific Coast Oil Company), being competing companies, were purchased by the Standard Oil Company of New Jersey about 1899. The Corsicana, the Security, the Colonial, the Standard of Nebraska, and the Prairie Oil and Gas Company were created by Standard interests subsequent to 1899, the control of the two former being kept secret.

Companies in which stock is owned by the Standard Oil Company of New Jersey.

[From Petitioner's Exhibits 1, 31, 31A]

Name.	Total capital stock.	Held by Standard Oil Co.		Stocks held by Standard Oil Trust in 1892.
		Amount.	Per cent.	
Actien Gesellschaft Atlantic (Atlantic Steamship Co.)....marks..	1,150,000	a 690,000	60.0	Yes.
American Petroleum Co....florins..	7,850,000	4,025,000	51.3	Yes.
Anglo-American Oil Co. (Limited)....pounds..	1,000,000	999,740	100.0—	Yes.
Atlantic Refining Co....dollars..	5,000,000	5,000,000	100.0	Yes.
Bedford Petroleum Co....francs..	1,750,000	1,737,500	99.3	
Borne-Scrymser Co....dollars..	200,000	199,700	99.9	
Buckeye Pipe Line Co....do....	10,000,000	9,999,700	100.0—	Yes.
Carter Oil Co....do....	2,000,000	2,000,000	100.0	
Chesebrough Manufacturing Co....do....	500,000	277,700	55.5	Yes.
Continental Oil Co....do....	300,000	300,000	100.0	Yes.
Colonial Oil Co....do....	250,000	249,300	99.7	
Crescent Pipe Line Co....do....	3,000,000	3,000,000	100.0	
Clarksburg Light and Heat Co....do....	100,000	51,000	51.0	
Deutsch-Amerikanische Petroleum Gesellschaft....marks..	9,000,000	9,000,000	100.0	Yes.
Deutsch-Amerikanische Petroleum Gesellschaft (share warrants)....do....	21,000,000	20,972,000	99.9	
Empire Refining Co....dollars..	100,000	78,500	78.5	Yes.
Empreza Industrial de Petrolio....do....	500,000	350,000	70.0	

Eureka Pipe Line Co.	do	5,000,000	4,999,400	100.0−	Yes.
Forest Oil Co. (in liquidation)	do				Yes.
Gilbert & Barker Manufacturing Co.	do	40,000	40,000	100.0	Yes.
Galena-Signal Oil Co.:					
Preferred	do	2,000,000	1,487,500	74.4	Yes.
Common	do	8,000,000	5,592,000	70.0	
Hazelwood Oil Co.	do	Not given.	125,550		
Hope Natural Gas Co.	do	500,000	500,000	100.0	
Indiana Pipe Line Co.	do	1,000,000	999,700	100.0−	Yes.
Imperial Oil Co. (Limited)	do	4,000,000	[c] 3,325,200	83.1	
Interstate Cooperage Co.	do	200,000	200,000	100.0	
Lawrence Natural Gas Co.	do	450,000	450,000	100.0	Yes.
Mahoning Gas Fuel Co.	do	150,000	149,900	99.9	Yes.
Marion Oil Co.	do	100,000	50,000	50.0	Yes.
Mountain State Gas Co.	do	500,000	500,000	100.0	
National Transit Co.	do	25,455,200	25,451,650	99.9+	Yes.
New York Transit Co.	do	5,000,000	5,000,000	100.0	Yes.
Northern Pipe Line Co.	do	4,000,000	4,000,000	100.0	Yes.
Northwestern Ohio Natural Gas Co.	do	2,775,250	1,649,450	59.4+	Yes.
Ohio Oil Co.	do	10,000,000	9,999,850	99.9+	Yes.
People's Natural Gas Co.	do	1,000,000	1,000,000	100.0	

[a] Stock owned by Anglo-American Oil Company, 390,000 marks; by Standard Oil Company of New Jersey, 300,000 marks.
[b] Stock owned by Anglo-American Oil Company, 3,725,000 florins; by Standard Oil Company of New Jersey, 300,000 florins.
[c] Stock owned by Anglo-American Oil Company, $1,900,800; by Standard Oil Company of New Jersey, $1,424,400.

Companies in which stock is owned by the Standard Oil Company of New Jersey—Continued.

Name.	Total capital stock.	Held by Standard Oil Co.		Stocks held by Standard Oil Trust in 1892.
		Amount.	Per cent.	
Pennsylvania Lubricating Co.....dollars..	50,000	30,000	60.0	
Pittsburgh Natural Gas Co.....do....	310,000	310,000	100.0	
Romano-Americana.....lei..	12,500,000	12,500,000	100.0	
Reserve Gas Co.....dollars..	2,225,000	1,112,600	50.0+	
Raffinerie Française.....francs..	400,000	400,000	100.0	
River Gas Co.....dollars..	190,000	100,000	52.6+	
Solar Refining Co.....do....	500,000	499,400	99.8+	Yes.
Southern Pipe Line Co.....do....	10,000,000	10,000,000	100.0	Yes.
South Penn Oil Co.....do....	2,500,000	2,500,000	100.0	Yes.
Società Italio-Americana pel Petrolio.....lire..	5,000,000	[a] 3,000,000	60.0	Yes.
South West Penna. Pipe Lines.....dollars..	3,500,000	3,500,000	100.0	Yes.
Standard Oil Co. (California).....do....	17,000,000	16,999,500	99.9+	
Standard Oil Co. (Indiana).....do....	1,000,000	999,000	99.9	Yes.
Standard Oil Co. (Iowa).....do....	1,000,000	1,000,000	100.0	Yes.
Standard Oil Co. (Kansas).....do....	1,000,000	999,300	99.9+	
Standard Oil Co. (Kentucky).....do....	1,000,000	997,200	99.7	Yes
Standard Oil Co. (Nebraska).....do....	600,000	599,500	99.9+	

Standard Oil Co. of New York	do	15,000,000	15,000,000	100.0	Yes.
Standard Oil Co. (Ohio)	do	3,500,000	3,499,400	99.9+	Yes.
Swan & Finch Co	do	100,000	100,000	100.0	Yes.
Taylorstown Natural Gas Co	do	10,000	[b] 10,000	100.0	
Underhay Oil Co	do	25,000	24,700	98.8	Yes.
Union Tank Line Co	do	3,500,000	3,499,400	99.9+	Yes.
United Oil Co	do	2,000,000	340,100	17.0	
Vacuum Oil Co	do	2,500,000	2,500,000	100.0	Yes.
Waters-Pierce Oil Co	do	400,000	274,700	68.6+	Yes.
West India Oil Refining Co	do	300,000	150,000	50.0	Yes.
West Virginia Oil Co	do	200,000	[c] 101,200	50.6	Yes.
West India Oil Co	do	100,000	99,300	99.3	
Washington Oil Co	do	100,000	71,480	71.4+	Yes

[a] Stock owned by Anglo-American Oil Company, 2,500,000 lire; by Standard Oil Company of New Jersey, 500,000 lire.
[b] Stock owned by Washington Oil Company, $7,000; by Standard Oil Company of New Jersey, $3,000.
[c] Stock owned by Galena-Signal Oil Company, $6,200; by Standard Oil Company of New Jersey, $95,000.

Companies in which stock is owned by the National Transit Company.

[From Petitioner's Exhibit No. 11.]

Name.	Total capital stock.	Stock owned by National Transit Co.		Stocks held by Standard Oil Trust in 1892.
		Amount.	Per cent.	
Connecting Gas Co.....dollars..	825,000	412,000	49.9	
Cumberland Pipe Line Co .....do....	1,000,000	998,500	99.9	
East Ohio Gas Co.....do....	6,000,000	5,999,500	100.0	
Franklin Pipe Co. (Limited).....do....	50,000	19,500	39.0	Yes.
New Domain Oil and Gas Co.....do....	1,000,000	998,500	99.8+	
Prairie Oil and Gas Co.....do....	10,000,000	9,999,500	100.0—	
Producers' Oil Co. (Limited) [a].....do....	600,000	250	.042	
Producers and Refiners Oil Co. (Limited) [a].....do....	250,000	30,000	12.0	
United States Pipe Line Co.[a].....do....	1,193,900	400,300	33.5	

[a] Independent companies.

Companies in which stock is owned by Anglo-American Oil Company (Limited).

[From Petitioner's Exhibit No. 11.]

Name.	Total capital stock.	Stock owned by Anglo-American Oil Co.		Stocks held by Standard Oil Trust in 1892.
		Amount.	Per cent.	
Actien Gesellschaft Atlantic.....marks..	1, 150, 000	390, 000	(a)	
American Petroleum Co.....florins..	7, 850, 000	3, 725, 000	(a)	
Gibraltar Petroleum Co.....pounds..	5, 000	5, 000	100. 0	
Imperial Oil Company (Limited), The.....dollars..	4, 000, 000	1, 900, 800	(a)	
Det Danske Petroleums Aktieselskab.....kroner..	2, 800, 000	1, 435, 000	51. 3	Yes.
Tide Water Oil Co.....dollars..	20, 000, 000	6, 215, 000	31. 1	Yes.
Tank Storage and Carriage Co. (Limited) Preferred.....pounds..	60, 000	59, 970	100. 0	
Tank Storage and Carriage Co. (Limited) Ordinary.....do....	8, 538/15	8, 537/18/6	100. 0	
Società Italo-Americana pel Petrolio.....lire..	5, 000, 00	2, 500, 000	(a)	

a Additional stock of this company is held by Standard Oil of New Jersey, and it is listed on pages 80-83, where the total proportion of the stock held by both is stated.

Companies in which stock is owned by Deutsch-Amerikanische Petroleum Gesellschaft.

[From Petitioner's Exhibit No. 11.]

Name.	Total capital stock.	Stock owned by Deutsch-Amerikanische Petroleum Gesellschaft.		Stocks held by Standard Oil Trust in 1892.
		Amount.	Per cent.	
Koenigsberger Handels Compagnie.....marks..	2,300,000	1,145,000	49.8	
Mannheim-Bremer Petroleum Actien Gesellschaft.....do....	3,000,000	3,000,000	[a] 100.0	
Petroleum Import Compagnie.....francs..	400,000	400,000	[b] 100.0	
Petroleum Raffinerie vorm. Aug. Korff.....marks..	1,500,000	819,000	[c] 54.6	
Schweizerische Petroleum Handels Gesellschaft.....francs..	300,000	300,000	[d] 100.0	
Société Anonyme Petrolea.....do....	400,000	266,000	[e] 66.5	
Wachs and Flossner Petroleum Gesellschaft.....marks..	100,000	100,000	100.0	
Westphalische Petroleum Gesellschaft.....do....	100,000	100,000	[f] 100.0	

[a] Owned by Deutsch-Amerikanische, 2,250,000 marks; by American Petroleum Company, 750,000 marks.
[b] Owned by Deutsch-Amerikanische, 240,000 francs; by Società Italo-Americana, 160,000 francs.
[c] Owned by Deutsch-Amerikanische, 710,000 marks; by American Petroleum Company, 109,000 marks.
[d] Owned by Deutsch-Amerikanische, 180,000 francs; by Società Italo-Americana, 120,000 francs.
[e] Owned by Deutsch-Amerikanische, 160,000 francs; Società Italo-Americana, 106,000 francs.
[f] Owned by Deutsch-Amerikanische, 75,000 marks; by Mannheim-Bremer Petroleum Actien Gesellschaft, 25,000 marks.

Companies in which stock is owned by Mannheim-Bremer Petroleum Actien Gesellschaft.

[From Petitioner's Exhibit No. 11.]

Name.	Total capital stock.	Stock owned by Mannheim-Bremer Petroleum Actien Gesellschaft.		Stocks held by Standard Oil Trust in 1892.
		Amount.	Per cent.	
Westphalische Petroleum Gesellschaft.....marks..	100,000	[a] 25,000	.....	

[a] Remaining stock of this company held by Deutsch-Amerikanische Petroleum Gesellschaft.

Companies in which stock is owned by the American Petroleum Company.

[From Petitioner's Exhibit No. 11.]

Name.	Total capital stock.	Amount owned by American Petroleum Co.		Stocks held by Standard Oil Trust in 1892.
		Amount.	Per cent.	
Amerikanische Petroleum-Anlagen.....marks..	750,000	750,000	100.0	
Automaat Company.....florins..	25,000	25,000	100.0	
Eschweiler Petroleum-Import.....marks..	30,000	7,500	25.0	
Ghent Petroleum Company.....francs..	1,000,000	600,000	60.0	
Hollandsche Petroleum Vereeniging.....florins..	30,000	30,000	100.0	
Mannheim-Bremer Petroleum-Actien-Gesellschaft.....marks..	3,000,000	[a] 750,000	.....	
Petrolifère Ghent.....francs..	100,000	74,500	74.5	
Petrolifère Nationale.....do....	50,000	50,000	100.0	
Petroleum-Raffinerie vorm. August Korff.....marks..	1,500,000	[b] 109,000	.....	
Société Anonyme H. Rieth Company.....francs..	1,650,000	1,000,000	61.0	
Rheinische Petroleum-Actien-Gesellschaft.....marks..	1,000	1,000	100.0	
Street tank wagon business—Duren.....do....	17,000	12,000	71.0	

[a] Remaining stock of this company held by Deutsch-Amerikanische Petroleum-Gesellschaft.

[b] Additional stock of this company is held by Deutsch-Amerikanische Petroleum-Gesellschaft and it is listed on page 86, where the total proportion of the stock held by both is stated.

Companies in which stock is owned by the Società Italo-Americana pel Petrolio.

[From Petitioner's Exhibit No. 11.]

Name.	Total capital stock.	Stock owned by Società Italo-Americana pel Petrolio.		Stocks held by Standard Oil Trust in 1892.
		Amount.	Per cent.	
Petroleum-Import Compagnie.....francs..	400,000	[a] 160,000	.....	
St. Paul Petroleum Tanks (Limited).....pounds sterling..	50,000	27,500	55.0	
Schweizerische Petroleum-Handels-Gesellschaft.....francs..	300,000	[a] 120,000	.....	
Société Anonyme Petrolea.....do....	400,000	[b] 106,000	.....	
Società Meridionale pel Commercio del Petrolio.....lire..	600,000	Unknown.	.....	
Società per gli Olii Minerali.....do....	780,000	406,575	52.1	
Société Tunisienne des Pétroles.....francs..	400,000	260,000	65.0	

[a] Remaining stock of this company held by Deutsch-Amerikanische Petroleum-Gesellschaft.
[b] Additional stock of this company is held by Deutsch-Amerikanische Petroleum-Gesellschaft.

Companies in which stock is owned by Det Danske Petroleums Aktieselskab.

[From Petitioner's Exhibit No. 11.]

Name.	Total capital stock.	Stock owned by Danske Petroleums Aktieselskab.		Stocks held by Standard Oil Trust in 1892.
		Amount.	Per cent.	
Aktieselskabet Ostlandske Petroleum Cie.....kroner..	600,000	55,000	9.2	
Krooks Petroleum og Olje Aktiebolag.....do....	1,000,000	10,000	10.0	
Skanska Petroleums Aktiebolaget.....do....	500,000	300,000	60.0	
Svenska Petroleums Aktiebolaget.....do....	100,000	75,000	75.0	
Sydvenska Petroleums Aktiebolaget.....do....	365,000	90,000	24.7	
Vestkustens Petroleums Aktiebolag.....do....	650,000	100,000	15.3	

Companies in which stock is owned by the Vacuum Oil Company.

[From Petitioner's Exhibit No. 11.]

Name.	Total capital stock.	Stock owned by Vacuum Oil Co.		Stocks held by Standard Oil Trust in 1892.
		Amount.	Per cent.	
Vacuum Oil Co. Proprietary (Limited)....pounds..	100,000	100,000	100.0	
Vacuum Oil Co. Reszvenytarsasag....kronen..	10,000,000	10,000,000	100.0	
Vacuum Oil Co. (Limited)....pounds..	55,000	54,950	99.9	
Vacuum Oil Co. Société Anonyme Française....francs..	2,000,000	2,000,000	100.0	
Deutsch-Vacuum Oil Co....marks..	2,500,000	2,500,000	100.0	
Vacuum Oil Co. Società Anon. Italiana....lire..	500,000	500,000	100.0	
Vacuum Oil Co. Aktiebolag....kroner..	100,000	96,600	96.0	

Companies in which stock is owned by Galena-Signal Oil Company.

[From Petitioner's Exhibit No. 11.]

Name.	Total capital stock.	Stock owned by Galena-Signal Oil Co.		Stocks held by Standard Oil Trust in 1892.
		Amount.	Per cent.	
S. T. Baker Oil Co.....dollars..	50,000	50,000	100.0	
Galena Oil Co. Société Anonyme Française.....francs..	200,000	200,000	100.0	
West Virginia Oil Co.....dollars..	200,000	[a] 6,200	.....	

[a] Additional stock of this company is held by Standard Oil Co. of New Jersey.

Companies in which stock is owned by Standard Oil Company of New York.

[From Petitioner's Exhibit No. 11.]

Name.	Total capital stock.	Stock owned by Standard Oil Co. of New York.		Stocks held by Standard Oil Trust in 1892.
		Amount.	Per cent.	
International Oil Co. (Limited).....yen..	5,500,000	5,467,000	99.4	

Companies in which stock is owned by the Washington Oil Company.

[From Petitioner's Exhibit No. 11.]

Name.	Total capital stock.	Stock owned by Washington Oil Co.		Stocks held by Standard Oil Trust in 1892.
		Amount.	Per cent.	
Taylorstown Natural Gas Co.....dollars..	10,000	7,000	(a)	

a Stock owned by Standard Oil Co. of New Jersey, $3,000.

Companies in which stock is owned by the Imperial Oil Company (Limited).

[From Petitioner's Exhibit No. 11.]

Name.	Total capital stock.	Stock owned by Imperial Oil Co.		Stocks held by Standard Oil Trust in 1892.
		Amount.	Per cent.	
Queen City Oil Co. (Limited).....dollars..	200,000	174,700	87.4	

IV. THE STANDARD OIL COMPANY IS THE RESULT OF ABSORPTION OF PREVIOUSLY COMPETING CONCERNS.

CONCERNS ABSORBED BY STOCK INTERESTS.

It appears to be the contention of counsel for the defense in this case that the properties of the Standard combination as it now exists have for the most part either been built and established by the Standard interests or bought outright by Standard interests many years ago. The facts do not justify this position. We now propose to show just how the present companies comprising the Standard combination have come to possess the properties which they own and operate, and to what a great extent those properties are the properties of previously competing concerns in which the Standard Oil Company or the Standard interests bought stock or united stock interests instead of buying properties outright. To be sure, in a large number of cases where such stock interests were acquired the companies were subsequently liquidated (usually many years later) and their physical properties turned over to other Standard concerns, but this does not alter the fact that these concerns were brought together by a combination and held together through stock ownership for a long period of time. Moreover, as we shall show, a large number of the present existing companies in the combination were originally independent concerns.

For the purpose of showing these facts we have prepared a table which is based for the most part

upon exhibits and testimony of the defendants themselves. This table shows in column 1 the names of the present companies in the combination, in column 2 the names of the earlier companies in the combination to whose property they have succeeded, in column 5 those of the present or former constituent companies of the combination which were originally independent competing concerns, and in column 6 those which were organized by Standard interests. We have also indicated in column 7 of this table what companies, although organized in the first instance by Standard interests, were nevertheless organized for the purpose of taking over at the time of organization previously competing concerns.

We have confined this table to companies engaged in the refining, manufacturing, and marketing business in the United States and pipe-line companies. We have excluded the companies operating in foreign countries on account of the lack of information concerning them; the crude-oil-producing companies; the considerable number of natural-gas companies in which Standard interests hold or have held stock, because no information concerning them was furnished by the defendants; also the Union Tank Line Company.

This table (which constitutes Appendix C) shows that the Standard Oil Company at present controls through direct stock ownership 37 companies (including the Standard of New Jersey itself) engaged in refining, manufacturing, marketing, and pipe-line transportation in the United States. *Of these 37*

companies, 28 were in existence prior to 1892, and their stock was held by the Standard Oil trustees at that time.

Of the 37 companies, all but 4—viz, the S. T. Baker Oil Company, the Standard Oil Company of California (Pacific Coast Oil Company), the Standard Oil Company of Nebraska, and the Prairie Oil and Gas Company—were in 1898 either controlled by their individual stockholders, to whom stock had been distributed by the trustees, as we have described, or in turn were controlled through stock ownership by such companies. The stock of the Pacific Coast Oil Company, a previously competing concern, was purchased in 1900 by the Standard Oil of New Jersey; so that practically every one of these companies were separate concerns brought together by the combination in the Standard of New Jersey in 1899.

Again, of the 37 companies, 11 were not in the first instance organized by Standard interests, but were competitors of the Standard prior to the original acquisition of their stocks by the trustees or other Standard concerns, while 6 were organized by Standard interests but took over at the time of their acquisition concerns which prior thereto had been competitors of the Standard.

These 37 companies, however, have succeeded to the property of 61 other concerns now out of existence, in which stock had previously been held by the Standard trustees or by Vilas, Keith & Chester, making 98 in all. We find these 98 are classified as follows: (1) 47 concerns which were not organized by the Standard interests, but which prior to the

acquisition of stock interests therein were competitors of the Standard interests; (2) 22 concerns which, although organized by Standard interests, were organized to take over concerns which were competitors of the Standard immediately prior to such organization; (3) 29 concerns which were organized by Standard interests, but many of which have, however, from time to time, taken over the property of some of the other concerns in the first two classes.

In the case of the refining and marketing concerns, the proportion which were not organized by the Standard, or which, if so organized, were organized for the purpose of taking over competing concerns, is much greater than for the companies as a whole; while, conversely, the proportion of the pipe-line concerns which have been organized by the Standard interests is quite large. This latter fact is the natural result of the practical monopoly which the Standard Oil Company has had of the pipe-line business since about 1877. As the production of oil has extended into new fields, the Standard has naturally been the concern to organize new corporations to go into the business, since it has virtually rendered competition in the pipe-line business impossible.

It is perfectly clear from these figures that these defendants have undertaken during the long history of their combination to bring together, under the cloak of stock ownership, an exceedingly large number of previously competing concerns. There can be no explanation of this large number of acquisitions of stock interests except the purpose of monopoly.

This table shows also the names of previous competitors which were taken over by concerns organized by the Standard interests at the time of their acquisition, so far as such names have been ascertained, and it specifies which of the companies now or previously in existence were parties to the trust agreement of 1879 and the trust agreement of 1882 at the time it was made (Jan. 1, 1882), or at some subsequent time.

GENERAL LIST OF ACQUISITIONS OF COMPETING CONCERNS BY THE STANDARD INTERESTS.

Aside from the very large number of previously competing concerns which, as we have shown by the table, Appendix C, were brought together by Standard interests through stock ownership, these same concerns have from time to time bought up directly the property of a still larger number of previously competing concerns in the various branches of the oil industry. We have no idea as to the total number of concerns that have thus been acquired. Doubtless it far exceeds the number regarding which specific evidence has been introduced in this case. Demands were repeatedly made upon Mr. Archbold and other officials of the Standard Oil Company and upon counsel for the defendants to produce a complete list of the concerns which have been acquired in any way by any Standard concern, but they failed to do so, and further claimed that it would involve an immense amount of work.

Appendix D is a table showing the names and location of all refining, manufacturing, marketing, and pipe-line concerns in the United States which have passed under the control of the Standard interests since 1870, so far as specifically covered by the evidence in this case. It includes the concerns named in Appendix C. Stars in the respective columns indicate those companies which were acquired through purchase of the stocks of previously competing concerns, those which were acquired through the organization of companies to take over their properties, and those which were bought outright. This table does not include foreign concerns, crude-oil companies, or natural-gas companies. The concerns are classified as far as possible under three groups: (1) Refining and manufacturing concerns, which are the most numerous; (2) marketing concerns; and (3) pipe lines. The dates of acquisition as given are in most cases accurate, but in a few cases are approximate only, the precise date not appearing in the testimony.

The total number of previously independent and competing concerns whose properties or stocks have thus been acquired by the Standard interests since 1870, so far as appears specifically from the evidence, is 215, of which about half were originally acquired by direct purchase, and the remainder by stock purchase or by the organization of companies to take over their property. This list does not include several concerns hereafter mentioned which are now controlled by agreements or by secret methods.

V. ADDITIONAL COMPANIES WHICH THE TESTIMONY SHOWS THE STANDARD OIL COMPANY SECRETLY OWNS, OR WHICH IT CONTROLS BY AGREEMENTS OR WORKING ARRANGEMENTS.

CORSICANA REFINING COMPANY.

It is alleged in the petition that the Corsicana Refining Company is a copartnership consisting of Henry C. Folger, jr., and Calvin N. Payne, and that it is owned and controlled by the Standard Oil Company. (Petition, vol. A, p. 45.) The defendants in their answer deny that the property of the copartnership belongs to the Standard Oil Company, or that the said copartners hold said property or transact said business for the use of the Standard Oil Company. (Answer, vol. A, pp. 407–8.)

The Corsicana Refining Company owns a refinery at Corsicana, Tex. Mr. C. M. Pratt, secretary and a director of the Standard Oil Company, and the owner with other members of his family of over 60,000 shares of its stock, was asked if he knew anything about the Corsicana Refining Company, and he denied that he did, except that he had heard that there was such a concern in Texas. He did not know that it belonged to Folger or Payne, or that the Standard Oil Company controlled it. (Vol. 1, pp. 19 and 20.) Mr. W. H. Tilford, treasurer and a director of the Standard Oil Company, and a very important officer of its various companies, testified to sub-

stantially the same thing. (Vol. 1, p. 115.) He also testified that the Standard Oil Company of New Jersey had no business relations with the Corsicana Refining Company, and that he could not answer as to any other company. (Vol. 1, p. 115.) It is past belief that a refinery which cost over $1,000,000 was, as we shall show, built and paid for and owned by the National Transit Company, a subsidiary company of the Standard Oil Company, without Mr. Pratt and Mr. Tilford ever hearing of it. We shall show that the Standard Oil Company did and still does control the Corsicana Refining Company, and when these individual defendants—John D. Rockefeller, Archbold, Rogers, and the others, the largest owners and intimately connected with the management of the Standard Oil Company and the National Transit Company—together with the corporate defendants, signed this answer, the only possible conclusion is that they knew the answer to be false and desired to cover up the ownership.

Evidence of the control by the Standard Oil Company was first discovered by the Government in the balance sheets of the National Transit Company, which showed (see Petitioner's Exhibit 34) December 31, 1899, accounts receivable, C. N. Payne and H. C. Folger, jr., $940,717.04, and similar items in other years. Mr. Folger testified that he and Mr. Payne, acting for the National Transit Company, in form borrowed the money from that company, but that the National Transit really owned it up to 1906; that they signed no notes for the money and

did not know how it was handled on the books. (Vol. 1, pp. 288 and 289.)

Down to June 15, 1906, Mr. Folger and Mr. Payne make no claim that they had any interest in the Corsicana Refining Company. On that date the cost of the property stood on the books as $992,644.15. Mr. Folger claims that he then made a verbal arrangement with Mr. John D. Archbold to buy this property on behalf of himself and Mr. Payne for that amount; that he paid no cash, had no written agreement, gave no notes, and no transfer of any kind was made, but that he agreed to pay for it in ten years at 6 per cent interest. He never made any payments except out of the income from the Corsicana. The books were kept and the properties managed and reports made afterwards in exactly the same way as before. While at one time Mr. Folger testified that he had received $45,000 from the profits of the Corsicana, he subsequently corrected this and testified that every dollar received from the Corsicana Refining Company had been turned over to the National Transit Company, and that he got this $45,000 from the latter company and was charged with it. We refer particularly to the testimony of Mr. Folger, from pages 292 to 300, and we quote the following from page 296 (vol. 1):

> Then, as a matter of fact, the National Transit Company has carried the Corsicana Refining Company on its books in exactly the same manner since you purchased it as it did before; has received the income and

charged it against the plant?—A. That is right; yes, sir.

Q. That is right, isn't it?—A. Yes, sir.

Q. That is what I thought. And the only change is your verbal talk with Mr. John D. Archbold?

Mr. ROSENTHAL. That is hardly fair.

(The last question was read.)

Mr. ROSENTHAL. The only change in what, Mr. Kellogg?

Q. The only change in the management of the property was simply your verbal understanding with Mr. Archbold. Do you understand what I mean?—A. Yes; I understand what you mean. Yes; I think that was.

Mr. Archbold testified that the reason why the property of the Corsicana Refining Company prior to 1906 was carried in the names of Folger and Payne was "probably with reference somewhat to the laws of Texas affecting the matter and under advice of counsel." (Vol. 17, p. 3316.) He further testified that the reason for the alleged sale of the property to Folger and Payne in 1906 was that "the vexatious conditions in Texas were such that it seemed best for us at all hazards to get rid of the property." Mr. Folger testified that, after this alleged sale, as before, the Waters-Pierce Oil Company, which the Standard Company controls, continued to buy substantially all the products of the Corsicana Refining Company except fuel oil, some of which is sold directly to other buyers. (Vol. 1, pp. 300–301.) We will later show how the Standard Oil Company

also sought to conceal the ownership of the Waters-Pierce Oil Company, doing business in Texas, as well as of the Security Oil Company, a Texas concern.

Mr. Payne's testimony regarding the Corsicana Refining Company is in general the same as that of Mr. Folger. (Vol. 1, pp. 317–324.)

It appears that on December 31, 1905, the property of the Corsicana Refining Company stood on the books of the National Transit Company at only $415,723.91; that it had on hand a large amount of cash accumulated from earnings; and that this cash was included in the pretended sale to Payne and Folger, so that the property actually cost them only a little over $400,000. (Vol. 1, p. 321.) It is inconceivable that the Standard Oil Company should make a bona fide sale of this company, which was paying large profits, for a price practically little over $400,000, selling it in this informal method to two of its principal officials, and taking pay in a verbal obligation running over ten years. Seller and purchaser alike knew the plant in the meantime would earn much more than enough to pay for it. The fact that they continued to operate the business, to keep the books, to receive reports and to handle the product in the same manner as before shows clearly that the sale was not a bona fide transaction. It is asking much of the credulity of any court to believe that it was. We believe that the court is justified in holding that this sale was a fraud and that the Standard Oil Company controls the Corsicana Refining Company at the present time, as it admittedly did up to June 15, 1906.

MANHATTAN OIL COMPANY AND INDIANA PIPE LINE AND REFINING COMPANY.

It is alleged in the petition that the defendants had acquired, either in the name of the Standard Oil Company or in the name of individuals or corporations to be held for the benefit of the Standard Oil Company, all the stocks of various corporations, among others the Manhattan Oil Company. (Petition, vol. A, pp. 43–44.) The answer specifically denies "that the Manhattan Oil Company is or has been owned or controlled by them or any of them." (Answer, vol. A, pp. 414–15.)

The history of the purchase and control of the Manhattan Oil Company is a most remarkable instance of the shifting devices and secret methods of the Standard Oil Company in their attempt to crush out all of their competitors. The principal witnesses telling the story of this transaction are E. C. Benedict (vol. 1, p. 5), Anthony N. Brady (vol. 1, p. 232; vol. 2, p. 882), and Frederick T. Cuthbert (vol. 2, p. 575). This testimony proves the following facts:

The Manhattan Oil Company was organized about 1890 under the laws of Ohio, having a paid-up capital stock of $2,000,000, with $800,000 of bonds. It was established by Anthony N. Brady and E. C. Benedict for the purpose of insuring a supply of gas oil principally to the People's Gas Light and Coke Company, of Chicago, and to the Indianapolis Gas Company, in which these men were interested. It had an extensive pipe line through the north and

south Lima fields (in Ohio), and the Standard Oil Company's lines were the principal competitors. (Brady, vol. 1, p. 233; Cuthbert, vol. 2, p. 587.) It also owned a refinery situated at Welker, Ohio, and about eight or nine hundred tank cars used for shipping oil. (Cuthbert, vol. 2, p. 578.) It was constructed for the purpose of protecting the gas companies. (Brady, vol. 1, pp. 233 and 234; Benedict, vol. 1, pp. 8 and 9.) The stock was owned principally by Brady and Benedict.

In 1898 the two millions of stock was deposited in the Central Trust Company of New York and bought by the People's Gas Light and Coke Company for $1,954,400. (Wallace, vol. 2, p. 833; Brady, vol. 2, p. 883.) This was substantially par for the stock. This was subject to $800,000 of bonds, making the purchase price paid by the People's Gas Light and Coke Company substantially $2,800,000. About one year later the People's Gas Light and Coke Company, through Mr. Brady, sold this stock to the General Industrials Development Syndicate (Limited), of London, England, for $615,363.67, plus the mortgage bonds which the company assumed, or a total of $1,415,363.67, which was more than $1,300,000 less than it had paid one year before. (Brady, vol. 2, p. 883.) In consideration of this $1,300,000 the General Industrials Development Syndicate (Limited), Mr. Brady testifies (vol. 2, pp. 884, 885), procured a contract from the Standard Oil Company of Indiana whereby that company agreed to furnish the People's Gas Light and Coke Company gas oil for a period of ten years for

the low price of $1\frac{2}{3}$ cents per gallon (subject to increase at a certain rate if the price of crude oil should advance) delivered at the works in Chicago (Petitioner's Exhibit 30), although before the sale the Manhattan Oil Company had made a contract with the Indianapolis Gas Company to furnish it gas oil for three years at 3 cents a gallon. (Petitioner's Exhibit 32.) It appears by Petitioner's Exhibit 384 that the Standard Oil companies in 1899 were receiving at the refineries an average of 3.33 cents per gallon (exclusive of freight charges) for all gas oil sold, while the price of $1\frac{2}{3}$ cents under this contract was the delivered price. Mr. Brady testified that the People's Gas Light and Coke Company practically gave $1,300,000 in assests in the sale of this Manhattan stock for this contract with the Standard Oil Company of Indiana. The question naturally occurs, Why was the Standard Oil Company of Indiana willing to give this contract, worth $1,300,000, unless it or some other Standard Company was the purchaser of the Manhattan Oil Company? When we narrate all of the circumstances the court will be convinced that the Standard was actually the purchaser of the Manhattan and gave this valuable contract in order to get rid of its competitor. Brady had a suspicion that the stock was being sold to the Standard Oil Company, and inquired of Mr. Cuthbert, the man who examined the plant on behalf of the purchaser, if he represented the Standard Oil Company, and he said he did not. (Brady, vol. 1, p. 239.)

Before going further into this testimony we wish to recur to the testimony of several of the principal

officers of the Standard Oil companies who positively asserted that they knew nothing whatever about the ownership of the Manhattan Oil Company. That they were thus ignorant is beyond belief. Mr. Pratt, who we have shown is an important official of the Standard Oil Company, so testified. (Vol. 1, p. 15.) Mr. Tilford, treasurer of the Standard Oil Company, also so testified. (Vol. 1, pp. 119, 120, 126.) Mr. C. N. Payne, who is vice-president of all the principal pipe-line companies, simply knew that Mr. Cuthbert, who was the president of the Manhattan Oil Company, had formerly been a Standard Oil man, and that he had heard of the Manhattan Oil Company. (Vol. 1, p. 313.) Mr. William G. Rockefeller, treasurer of the Standard Oil Company of New York and assistant treasurer and director of the Standard Oil Company of New Jersey, testified that he had only heard of the Manhattan Oil Company in the papers and in this trial, and that the same was true of the General Industrials Development Syndicate. (Vol. 2, p. 866.) Mr. Archbold's testimony to similar effect, given a year later, we shall refer to later.

Let us now show the circumstances under which this stock was bought in 1899. Mr. Brady testified that a firm of solicitors in London (Budd, Johnson & Jecks) were the representatives of the General Industrials Development Syndicate (Limited), of London, England, which company bought (about October 1, 1899) the stock of the Manhattan Oil Company; that Mr. Herbert W. Johnson, of that

firm of solicitors, came to him in New York with a letter of introduction from Brown Brothers & Co., bankers, of London and New York. For all that appears, these purchasers never had been engaged in the oil business, and no witness knew anything about the General Industrials Development Syndicate (Limited) beyond this transaction. (Brady, vol. 1, pp. 234 to 237.)

Although the People's Gas Light and Coke Company one year before paid $2,800,000 for this pipe line, refinery, and car line, in order to protect its plants in its supply of gas oil, it sold them to a concern which it had never heard of, and about which it made no inquiries, at a loss of $1,300,000, on receiving the contract heretofore referred to from the Standard Oil Company of Indiana. The contract for the sale of the stock is found in vol. 1 of the record, pp. 234 and 235. Mr. Johnson telegraphed to Brady on August 31, 1899, accepting the option and designating John H. Cuthbert (who is now dead) as agent to arrange details and payments, stating that he had full authority. (Vol. 1, p. 236.) John H. Cuthbert was formerly the Standard Oil representative in the Tidewater Oil Company. (Benson, vol. 1, pp. 207 and 208.) He was also formerly connected with the National Transit Company. (Payne, vol. 1, p. 313; Frederick T. Cuthbert, vol. 2, p. 578.)

The transactions of the Manhattan Oil Company with the Standard after this sale of its stock are significant. Within a few months thereafter it con-

nected its pipe lines with the Buckeye Pipe Line Company and the Indiana Pipe Line Company, Standard concerns, and ever since has sold all of the oil collected by its pipe lines to the Standard Oil Company. (Payne, vol. 1, p. 357; Cuthbert, vol. 2, pp. 580, 589, 591.) Immediately after the purchase of the Manhattan by the Development Syndicate, moreover, the Manhattan sold its cars to the Union Tank Line Company, a Standard concern, for $468,215.14. (Vol. 2, p. 591.) Furthermore, shortly after the purchase, the Manhattan's refinery commenced to reduce its business, and on March 26, 1901, the refinery was sold for $250,000 to the Solar Refining Company, a Standard concern, and is not now operated. Moreover, not long after the sale to the General Industrials Development Syndicate the Manhattan disposed of its crude-oil wells to the Ohio Oil Company, another Standard concern, for $380,521. (Cuthbert, vol. 2, p. 591.) The total of these sales to Standard concerns was $1,098,736.14.

As a result of these transactions, the only property remaining to the Manhattan Oil Company was its pipe line, and, as already stated, this has since that time delivered all of the oil it received to Standard pipe lines. The business of the company having thus been reduced, it proceeded, on May 23, 1902, to reduce its capital from $2,000,000 to $500,000, and subsequently, October 23, 1905, it was further reduced to $150,000. (Vol. 2, p. 582.)

It is simply inconceivable that an English concern should have bona fide bought up a corporation en-

gaged actively in the oil business and then forthwith sold out the crude-oil production, the refinery, and the cars connected therewith and turned over the crude oil collected by its pipe lines to another concern; and the fact that in each case it was a Standard Oil concern which bought the property or received the oil from the pipe lines is virtually conclusive evidence that the General Industrials Development Syndicate (Limited) is merely a cloak for the Standard Oil Company itself.

It may be noted in passing that F. T. Cuthbert, the present president of the Manhattan Oil Company, a son of John H. Cuthbert, above mentioned, had been for years prior to his connection with the Manhattan an employee of the Standard Oil Company, which he left immediately before he entered the employ of the Manhattan and shortly after the transfer of that company's stock to the English concern. (Vol. 2, p. 576.)

A further significant indication of the true ownership and purpose of the General Industrials Development Syndicate is found in the fact that this concern was used to buy up another competitor of the Standard Oil Company in addition to the Manhattan. This was the Indiana Pipe Line and Refining Company, which was controlled by the Cudahy interests and which built a pipe line from the Indiana oil field, and a refinery at Kankakee, Ill. About the time the refinery was completed, and before it commenced operation, the stock of this company was bought up by the General Industrials Development Syndi-

cate and the refinery immediately dismantled, while the pipe line which it operated has ever since turned over all of its oil to the Indiana Pipe Line Company, a Standard concern. The pipe line is still owned by the original Indiana Pipe Line and Refining Company, of which Mr. Cuthbert is president, and its stock is still held by the English company. Mr. Archbold, on being examined about this Indiana concern, evidently forgot himself, for he testified that the Standard Oil Company bought the pipe line and refinery. (Vol. 17, p. 3310.) He further testified that the refinery had not been constructed, the material simply being on the ground. In this he is mistaken, as the man who had charge of the construction (Mr. Isom) testified in rebuttal (vol. 20, p. 360) that the property was sold to an English concern, that about 180 miles of pipe line was completed, that the refinery for making refined oil was completed, but that certain by-product departments were not completed. Being confronted with Mr. Cuthbert's testimony that the Industrials Syndicate also bought this Indiana pipe line, Mr. Archbold testified that he never had heard of it before and knew nothing about it. (Vol. 17, pp. 3311, 3312.) Here again it is inconceivable that a bona fide independent concern should have bought up a pipe line and refinery and straightway dismantled the same. Obviously, only the Standard Oil Company could be benefited by the destruction of the competition of the Indiana Pipe Line and Refining Company. (See testimony of Cuthbert, vol. 2, p. 592.)

A further significant circumstance is the connection between the General Industrials Development Syndicate and the London Commercial Trading and Investment Company, which, as we will show later, controls, obviously in the interest of the Standard Oil Company, the Security Oil Company of Texas. The firm of Budd, Johnson & Jecks were the attorneys who represented the London Commercial Trading and Investment Company, as well as the General Industrials Development Syndicate (Limited). It appears also that a Mr. Francis is the secretary of both of these companies, although the witnesses were apparently confused as to the initials. (Brady, vol. 1, p. 235; Cuthbert, vol. 2, p. 582; Bayne, vol. 2, p. 789.)

These are the facts on which we rely to show that not only does the Standard Oil Company own and control the Manhattan, but that it was a strong competitor in a great oil field which the Standard desired to remove, and which it did thus secretly remove.

After we had shown these facts, the attorneys for the Standard Oil Company made a stipulation on January 14, 1908, that any decree which the Government shall obtain against each or any of the corporations defendant in this case shall also be entered against the Manhattan Oil Company (Rec. Vol. A, p. 523). The decree, of course, if it is rendered against any company, will state that the Standard Oil Company owns and controls certain corporations, and this is a stipulation that the same decree as to ownership and control may be entered regarding the Manhattan Oil Company.

We believe the true disclosure of the ownership of the General Industrials Development Syndicate, as well as of the London Commercial Trading and Investment Company, referred to later, is found in a loan made by the Anglo-American Oil Company, a concern organized in England, of which the Standard owns the entire stock, to Mr. James McDonald, who was formerly chairman of the board of directors of the Anglo-American Company and in charge of the London office. (It will be remembered that the Corsicana Refining Company was constructed and carried on under the guise of a loan made to Folger and Payne by the National Transit Company.) In the examination of the books of the Anglo-American Oil Company, at New York, it was found that on December 5, 1900, James McDonald owed the Anglo-American $2,484,590.86, this amount having been transferred from the London books of the company to the New York books, thus indicating apparently that the loan had been made some time previously. Various payments were made on this loan from time to time during 1900, 1901, and 1902, so that it was reduced, on December 31, 1902, to $1,155,044.61. These payments apparently represent profits or the proceeds of the sale of property, just as the reduction of the loan of the National Transit Company to Payne and Folger was brought about by the crediting of profits. Beginning with 1903 numerous additional loans were made to McDonald, so that at the end of that year his nominal indebtedness to the Anglo-American was $2,759,719.71. This increase was about the time of

the construction of the Security Oil Company's plant in Texas, hereafter referred to. This loan has been subsequently reduced materially by payments presumably of the profits of either the Manhattan or the Security Oil Company. (See Petitioner's Exhibits 348 and 349; testimony of Brainerd, vol. 2, p. 689.)

It is a remarkable thing that not a single officer of the Standard companies who was on the stand could explain what this great loan to McDonald was for. Mr. Tilford, the treasurer of the Standard Oil Company of New Jersey, was examined on this subject (vol. 1, pp. 460 and 461) and could not explain it. Mr. Brainerd, the secretary of the Anglo-American Oil Company and comptroller of the Standard Oil Company of New Jersey, who has the custody of the books of the Anglo-American at New York, could not explain it (vol. 2, p. 690). William G. Rockefeller, treasurer of the Standard Oil Company of New York, knew nothing of this loan. Mr. Archbold was placed on the stand over a year later, and the record shows that most strenuous efforts were made by the Government to find out from him about the Manhattan Oil Company and the loan to James McDonald. He testified that the Manhattan's pipe lines and refineries were, before 1899, competitive with the Standard Oil Company. He knew nothing about the purchase by the General Industrials Development Syndicate; knew nothing about that company or Budd, Johnson & Jecks. He could not explain the loan to James McDonald. He knew that

the Government had inquired into this account a year before, but he had not looked it up. He thought the London director of the Anglo-American Oil Company would be the only one who could explain it. When asked why the American books of the Anglo-American Oil Company were kept, he testified: "So as to know about the transactions here that are made on behalf of the company." Yet this was one of the most important transactions and he could find out nothing about it. He refused to produce the English books of the Anglo-American Oil Company because he claimed he had no power to do so. He testified that he was reelected a director in the Anglo-American Company June 27, 1907, but resigned about the time the Government commenced to take testimony in this case; that Mr. H. H. Rogers and Mr. J. A. Moffett, prominent Standard Oil men, were also elected with him, but subsequently resigned. (Archbold, vol. 17, pp. 3299–3313.)

Later Mr. Archbold was again asked to look up this McDonald loan and furnish the Government the information. He returned to the stand (vol. 17, p. 3651) and, by advice of his counsel, refused to furnish any further information. Mr. Milburn said: "I think the answer at that time, as I recall it, was that Mr. Archbold has no information about the matter, and has not the books, and is not an officer of that company." In view of the inquiry made in the autumn of 1907 as to the purchase of the Manhattan Oil Company and the Security Oil Company, in view of the

repeated inquiries and requests made of Standard officials regarding this loan, in view of the fact that the Standard Oil Company owns all of the stock of the Anglo-American Oil Company, and that Mr. Archbold is really the head of the Standard Oil Company, we think it hardly possible that information regarding the $2,000,000 loan made to an employee could not be procured by him at the time of his testimony in December, 1908.

SECURITY OIL COMPANY.

The Security Oil Company was organized in 1903 under the laws of Texas, with a capital of $1,500,000 and a bonded indebtedness of $2,500,000. (Bayne, vol. 2, p. 793.) Mr. Howard Bayne, assistant secretary, in charge of the New York office, was examined on this subject. It appears, in substance, that this plant was partially completed and put in operation in the summer of 1903; that all of the stock (except three shares) stands in the name of the London Commercial Trading and Investment Company (Limited), of London, England; that this same firm, Budd, Johnson & Jecks, are the solicitors, and the same man, Francis, the secretary, as in the case of the General Industrials Development Syndicate Limited (testimony of Bayne, vol. 2, p. 788 et seq.); that S. G. Bayne (the father of Howard Bayne), who was in Europe and could not be procured, is the president of the Security Oil Company. He is president of the Seaboard National Bank, which adjoins the Standard Oil Building, 26 Broadway, New York, in which Mr. Archbold is a stockholder,

and at which some of the subsidiary corporations of the Standard Oil Company keep their bank accounts. (Vol. 17, p. 3314.) Mr. Howard Bayne testified that the money for the construction of the plant came from the London company. He knew nothing, however, of the business of the London company; never had any communication with it, further than that the money was sent here to build the plant. Mr. F. W. Weller, first manager of the company, was a former Standard Oil man and is now again in the employ of the Standard Oil Company. Both S. G. Bayne and Howard Bayne are stockholders in the Standard Oil Company of New Jersey. (Defendants' Exhibit 1.)

When the Security first started it had some crude-oil production of its own in the Texas field, but at the time of Bayne's testimony it was buying all of its crude oil from the Prairie Oil and Gas Company, a Standard concern; and, with the exception of a small amount sold to the Southwestern Oil Company, it has always sold its entire product to Standard concerns. (Petitioner's Exhibit 368.)

Mr. Bayne testified that the reason his company sells to Standard concerns and does not market its own product, the way the other Standard concerns do, is that it is not authorized to do so under its charter; a most astonishing statement, that a corporation authorized to manufacture the products of petroleum can not sell them. He admitted that he was in charge of the selling department, but said he had never made any investigation about marketing their own oil or selling to other concerns outside of

the Standard. He admitted that 1 cent a gallon was a good profit on oil, and that his company made less than that.

It appears in this case that the profit of the marketing companies of the Standard alone, exclusive of the profit of their manufacturing companies, in many of the Western States runs from 3 cents to 5 cents per gallon (Bayne, vol. 2, p. 800; also Petitioner's Exhibits 314, 320, 630), and that in Texas the profits of the Waters-Pierce Oil Company amount in many towns to from 3 cents per gallon to 6½ cents per gallon (Petitioner's Exhibit 302B); yet the Security is satisfied with selling its product to the Standard at a profit of less than 1 cent per gallon.

It further appears that the Security has never paid any dividends to the stockholder, the London company, and yet that no complaint has been made by the London company. It is perfectly evident that the company has been run so that the principal profits go to the regular companies of the Standard.

After this testimony had been presented, counsel for the Standard Oil Company and the Security Oil Company made a stipulation which is similar to that made in regard to the Manhattan Oil Company, which means practically that the decree, if entered at all, may state that the Security is owned and controlled by the Standard. (Stipulation, vol. A, p. 522.)

Mr. Archbold was also examined in relation to the Security Oil Company, but could give no information whatever. He testified that he did not know who owned the Security. Here again he was requested

to produce the books showing what the loan to James McDonald was for, but declined to do so. (Vol. 17, pp. 3316 and 3317.)

It seems very peculiar that two corporations very similar in name, both represented by one firm of London solicitors, should embark in what Mr. Rockefeller calls a "hazardous business" in this country, have very close relations with the Standard Oil Company, and that no official of the Standard Oil Company should know anything whatever about them, or be able to explain or obtain any information of a loan of over $2,000,000 by their English company to one of their employees. The testimony, in our judgment, is clear that the Standard Oil Company controls the Manhattan Oil Company, the Indiana Pipe Line and Refining Company, and the Security Oil Company, but has sought to keep that control secret to avoid the charge of monopoly.

WATERS-PIERCE OIL COMPANY.

While the answer in this case admits the ownership by the Standard of the majority of the capital stock in the Waters-Pierce Oil Company (Answer, vol. A, p. 434), it also appears that for many years, until proven in the case of the State of Missouri *v.* Standard Oil Company, the Standard denied the ownership of stock and the control of the Waters-Pierce Oil Company; that matter was one of the principal issues in the Missouri case.

The Waters-Pierce Oil Company is one of the important marketing companies of the Standard Oil Company, and has the exclusive sale of Standard Oil

products in the southern half of Missouri, in Arkansas, Oklahoma, Texas, and Louisiana west of the Mississippi River, and in the Republic of Mexico. (Pierce, vol. 3, pp. 1068, 1079; Tilford, vol. 1, p. 149.)

Prior to 1900 there was a Waters-Pierce Oil Company, which signed the trust agreement of 1882. It appears that this company had been excluded from the State of Texas, and it was reorganized in May, 1900, under the laws of Missouri and the new company admitted into the State of Texas. The capital stock of both the old and the new corporation was $400,000, being 4,000 shares of $100 each, of which 2,747 belonged to the Standard Oil Company and appeared in the books of the Standard Oil Company up to some time in 1900. (Petitioner's Exhibits 2 and 3.) It then disappeared and did not again appear in the books of the Standard Oil Company until 1907, the only evidence of the ownership during those years being an account found on the books of the Standard Oil Company showing income from what was known as the C. M. Pratt investment account. (Petitioner's Exhibits 5–8.) Mr. Pratt was examined on this subject and testified that this account showed the income from the Waters-Pierce stock. (Pratt, vol. 1, pp. 71–78.)

The stock remained in Mr. Pratt's name, covered up on the books in this account, until 1904, about the time the suit in the State of Missouri was brought, at which time Mr. Pratt testifies that the stock was sold in good faith to M. M. Van Buren for about $4,000,000 and Mr. Van Buren's note was taken;

that Mr. Van Buren made a payment of $150,000, and all the other payments on the note between 1904 and 1907 came from the income on the 2,747 shares, which amounted to $1,853,000 in 1904 alone.

It appears that Mr. Van Buren is a son-in-law of John D. Archbold; that the stock and the note were left in the hands of Mr. Pratt; that at the end of this time, to wit, about 1907, the note was canceled, Mr. Van Buren was paid back his $150,000, the transaction was closed, and the stock transferred to the books of the Standard Oil Company. This was about the time Mr. Pierce, president of the company, testified in the Missouri case, which testimony was given, as the record shows, in September, 1906.

In 1908 Mr. Archbold testified that the Waters-Pierce stock was really owned by the Standard Oil Company all the time, but was put in the names of individuals under advice of counsel. (Vol. 17, pp. 3317–3318.) Counsel may say that these transactions regarding the stock are immaterial, because the answer admits the ownership by the Standard Oil Company of the stock in the Waters-Pierce Oil Company, but they are material in that they show how the Standard Oil Company has reached out and controlled the business throughout this country by holding out large companies as independent competing concerns, while actually controlling them by secret ownership, not appearing upon the books of the Standard Oil Company. They also affect the credibility of such men as Mr. Pratt, who swore positively that the sale to Van Buren was made in good faith.

VI. DESCRIPTION OF THE BUSINESS TRANSACTED BY THIS COMBINATION AND BY THE SEPARATE COMPANIES ENGAGED IN EACH BRANCH THEREOF.

The Standard Oil Company, through its various subsidiary companies, is engaged in producing crude petroleum from the wells, in purchasing the same from other producers at the wells in the various oil fields in the United States, in transporting the same by pipe lines through the various States to the refineries or to the places of consumption, in transporting some crude petroleum by steamship and by rail, in refining the petroleum at various refining centers, in transporting the products by its own car lines over the various railroads in the United States or by its own vessels to the place of sale, and in selling and distributing the same to the wholesale, or more often the retail, dealers (and in some cases directly to consumers) through all of the United States and much of Europe. The business is clearly in its entirety an interstate business.

A general description of the various branches of this business and the manner in which it is carried on will be useful to the court in determining this case. The testimony and exhibits showing these facts are scattered throughout the record, but are entirely undisputed, and we shall not therefore refer to pages in the record in detail. We will explain this business through the separate departments and by the separate corporations transacting same.

OIL FIELDS AND CRUDE-OIL PRODUCTION.

The petroleum fields in the United States are as follows:

1. The Appalachian, or Pennsylvania, field, which was the first discovered, extends from southwestern New York, in a southwesterly direction, through the western part of Pennsylvania into West Virginia and southeastern Ohio; also, in a small degree, into Kentucky and Tennessee. The oil of this field is generally superior in quality, and is known as Pennsylvania oil.

2. The Lima-Indiana field is situated in northwestern Ohio and northern Indiana. This was the second important field discovered.

3. The Illinois field is situated in southern Illinois, and was discovered about 1906.

4. The Mid-Continent field is a very large field situated in the southeastern part of Kansas and northern Oklahoma (including the former Indian Territory). This field is also frequently called the Kansas-Territory field and the oil is often called Kansas oil. It was discovered about fifteen years ago, but the large developments commenced about 1904.

5. The Texas and Louisiana field is situated in the southeastern part of Texas and western Louisiana. The oil of this field is for the most part inferior in quality, and a large part of it is not used for refining purposes, but is consumed directly as fuel.

6. The Colorado field is a small field situated at Florence, Colo., with another and still smaller pro-

duction at Boulder, Colo. This field was developed about twenty years ago. There is a small amount of oil produced in Wyoming, but it hardly deserves the description of a field, and may be disregarded in this case.

7. The California field is located in various parts of the southern half of California. The larger part of the oil is of inferior grade, and most crude of that grade is not refined, being used directly for fuel.

The annual production of crude oil in each of these fields from 1880 to 1906, as reported by the Standard Oil Company, is shown in Petitioner's Exhibit 372. The following are the figures for 1906, in barrels of 42 gallons:

Pennsylvania	27,741,851
Lima-Indiana	17,578,902
Mid-Continent	22,134,594
Texas and Louisiana	19,771,865
California	32,623,229
Illinois	4,918,604
Other fields	400,000
Total	125,169,045

The Standard Oil companies produced only about one-fifth of the crude petroleum manufactured by them (1906; the proportion was formerly larger, about 45 per cent in 1900). The Standard's production of crude petroleum is largely in the Pennsylvania, Lima-Indiana, and Illinois fields. The principal oil-producing companies of the Standard in these fields are: In the Pennsylvania field, South Penn Oil Company, Carter Oil Company. In the Lima-Indiana and Illinois fields, the Ohio Oil Com-

pany. The Standard Oil Company, through the Prairie Oil and Gas Company, also produces a small quantity of oil in the Mid-Continent field; and, through the Standard Oil Company of California, a small quantity in the California field.

The larger part of the crude petroleum refined by the Standard companies is bought at the wells by purchasing agents of the Standard Oil Company and immediately delivered into the pipe lines of the Standard companies, as we will hereafter show. A map of the various oil fields, except the Texas, California, and Colorado fields, with the trunk pipe lines reaching the same, will be found in evidence. (Petitioner's Exhibit 50.)

PIPE LINES.

The Standard Oil Company has pipe lines extending from the Mid-Continent field in Kansas and Oklahoma through all the other eastern fields to various places upon the Atlantic seaboard, and with other termini at the various interior refineries. This system of pipe lines is owned by various companies, usually distinct from those operating refineries. They may be divided generally into what are known as gathering pipe lines and trunk pipe lines. The gathering lines reach substantially all the wells in the various fields, and the oil is usually taken into these pipe lines direct from the small tanks of the producers at the wells. It is then transported to certain gathering stations. There are often large storage tanks connected with these gathering pipe

lines in which to store the surplus oil pending consumption. From the gathering lines or from these storage tanks the oil passes by the trunk lines to the final destination. These trunk lines, in a general way, are shown upon Petitioner's Exhibit 50. The companies owning these lines, with a general description thereof, are as follows:

The Prairie Oil and Gas Company owns the gathering lines in the Mid-Continent field, and a trunk line thence to the refineries of the Standard Oil Company at Neodesha, Kans., and Sugar Creek, Mo., and extending thence across the States of Missouri and Illinois to Griffith, Ind., where it connects with a line extending north a few miles to the large refinery at Whiting, Ind., and also with a line running east to the Atlantic seaboard.

The Indiana Pipe Line Company owns the gathering lines in Indiana, and also a trunk line between Whiting, Ind., and the Ohio state line.

The Ohio Oil Company owns the gathering lines in the Illinois field, and a trunk line thence to a connection with the Indiana Pipe Line.

The Buckeye Pipe Line Company owns the gathering lines in the Lima field in northwestern Ohio and in that part of the Pennsylvania field lying in southeastern Ohio, and a trunk line across the State of Ohio to the Pennsylvania state line, with a branch to Cleveland.

The Manhattan Oil Company, as heretofore shown, owns certain lines in Indiana and Ohio which deliver

their oil either to the Indiana Pipe Line Company or to the Buckeye Pipe Line Company.

The Indiana Pipe Line and Refining Company has a relatively small line in Indiana; this company, it will be remembered, is controlled by the same company owning the Manhattan, the General Industrials Development Syndicate (Limited), of London.

In the Pennsylvania field there are gathering lines owned by the New York Transit Company, operating in New York; by the United Pipe Lines Division of the National Transit Company, operating in northwestern Pennsylvania; by the South West Pennsylvania Pipe Lines, operating in southwestern Pennsylvania; by the Eureka Pipe Line Company, operating in West Virginia; and by the Cumberland Pipe Line Company, operating in Tennessee and Kentucky.

There are four trunk lines running to the seaboard from this field, all of which are also so connected with the trunk lines previously described that they can transport oil from the fields farther west as well as from the Pennsylvania field. The New York Transit line extends from southwestern New York to Bayonne, N. J., and across the city of New York to Brooklyn and Long Island City. The entire line was formerly owned by the New York Transit Company, but since about the time of the bringing of this suit that part of the line across the State of New Jersey has been conveyed to the Standard Oil Company of New Jersey, in an attempt to evade the laws of Congress compelling it to act as a common carrier, as will be more fully shown hereafter. The New York

Transit Company also has a line to the Standard refinery at Buffalo.

Another trunk pipe line extends from northwestern Pennsylvania southeast across the State to Philadelphia, reaching also Bayonne, N. J. This line was formely owned throughout by the National Transit Company, but the part in New Jersey was transferred to the Standard Oil Company of New Jersey in 1905.

The Southern Pipe Line extends from Morgantown, W. Va., through southern Pennsylvania to Philadelphia, making connection also with the line to Bayonne, just mentioned, at Millway, Pa. There is also a branch line from this junction at Millway, extending south to Baltimore; this is owned in part by the National Transit Company, but the part in Maryland has been owned since 1905 by the Standard Oil Company of New Jersey.

The Cresent Pipe Line extends from southwestern Pennsylvania eastward to Marcus Hook, on the Delaware River, near Philadelphia.

The Northern Pipe Line Company owns part of the trunk lines in northwestern Pennsylvania which connect the Buckeye trunk line with the National Transit and New York Transit lines.

All of the above-mentioned pipe-line companies are directly controlled by the Standard Oil Company through stock ownership, or by the National Transit Company.

We have described only in a general way these pipe lines. They are shown in detail on maps which we have introduced in evidence (Exhibits 356 A to

356 J.) These maps also show the connections of the pipe lines with the various refineries. The Government also introduced certain maps or diagrams showing the exact constitution of the trunk pipe lines of the Standard system from Oklahoma to the Atlantic seaboard. These diagrams show the number and size of pipes and the various divisions and pumping stations, and are Petitioner's Exhibit 964–976 (Prairie Oil and Gas Company's line from Oklahoma to Griffith, Ind., near Whiting), and Petitioner's Exhibits 990 and 991 (lines east of Griffith).

In the State of Texas the Corsicana Refining Company and the Security Oil Company own certain pipe lines, maps of which were not put in evidence, and which connect their refineries with the various oil fields in that territory.

In California the Standard Oil Company of California owns a pipe line extending from the Kern River field and the Coalinga field in central California to the refinery at Richmond, near San Francisco, and also several smaller lines extending from the fields in southwestern California to the seaboard.

REFINERIES.

A list of the Standard Oil refineries, together with the name of the company owning the same and the location thereof, the crude oil consumed, and the principal products of each, is stated in Petitioner's Exhibit 393. The relative size thereof will be shown by the crude oil consumed. This was furnished by the defendants, and the location of the refineries described by several witnesses.

Barrels of crude consumed, 1904.

Standard Oil Company of California:	
Richmond (Cal.) works	3,466,556
Standard Oil Company of Indiana:	
Whiting (Ind.) works	8,192,945
Standard Oil Company of Kansas:	
Neodesha (Kans.) works	804,843
Standard Oil Company of New Jersey:	
Baltimore (Md.) works	1,921,641
Bayonne (N. J.) works	10,590,381
Eagle works, Constable Hook, N. J.	2,304,445
Parkersburg (W. Va.) works	461,671
Standard Oil Company of New York:	
Atlas works, Buffalo, N. Y.	1,032,574
Long Island works, Long Island City, N. Y.	1,880,692
Pratt works, Brooklyn, N. Y.	1,679,021
Pratt works, Long Island City, N. Y.	[a] None.
Sone & Fleming works, Long Island City, N. Y.	2,017,409
Standard Oil Company of Ohio:	
Cleveland works	1,039,385
Vacuum Oil Company:	
Rochester and Olean (N. Y.) works	1,302,842
Atlantic Refining Company:	
Eclipse works, Franklin, Pa.	2,337,845
Philadelphia works	9,720,950
Pittsburg works	372,817
Solar Refining Company:	
Lima (Ohio) works	1,719,388
Total	50,845,405

Since 1904 refineries have been put in operation by the Standard at Sugar Creek, Mo., near Kansas City, and at Upper Alton or Wood River, Ill.

It will be observed that the most important refining companies are the Standard Oil companies of New Jersey, New York, and Indiana, and the Atlantic Refining Company. It will be further observed that the two largest refineries are situated on the Atlantic seaboard, at New York Harbor and Philadelphia, respectively; that, taking the various refineries on New

[a] Handles partly finished material from other refineries.

York Harbor (Bayonne, N. J., Long Island City, Brooklyn, and Constable Hook), the crude-oil consumption constitutes considerably over one-third of the total, and that, taking all of the refineries on the Atlantic seaboard, including those on New York Harbor, at Philadelphia and Baltimore, the crude-oil consumption constitutes about three-fifths of the total. The evident explanation of the location of so many large refineries of the Standard Oil Company on the Atlantic seaboard is found in the enormous export trade in petroleum products, more fully shown later.

The most important interior refinery of the Standard Oil Company is at Whiting, Ind., which supplies an enormous area in the central and southern parts of the United States.

Mr. Archbold, in his testimony, sought to give the impression that the Standard Oil Company had shown greater foresight than its competitors in selecting favorable locations for its refineries, particularly in establishing so many and so large refineries at the Atlantic seaboard. It appears, however, that most of the refineries now operated by the Standard at the Atlantic seaboard were established by other concerns previous to their acquisition by the Standard Oil Company. Moreover, when we come to consider the policy of the Standard Oil Company in refusing to permit the use of its pipe lines to the seaboard by other refiners, and in preventing the construction of independent pipe lines to the sea-

board, it is easy to understand why so few independent refineries have been established there. The same policy of the Standard Oil Company also explains, no doubt, why independent refineries have not been established at or near Chicago to compete with the Whiting refinery.

The following statement (Petitioner's Exhibit 394) shows the location of the refineries and the crude oil consumption of the Tidewater, Corsicana, Security, and United companies, which either are controlled by the Standard Oil Company or have contracts by which the Standard acts as their selling agent:

	Barrels.
Tidewater Oil Company, Constable Hook (N. J.) Works	2,745,329
Corsicana Refining Company, Corsicana (Tex.) Works	643,700
Security Oil Company, Chaison (Beaumont, Tex.) Works	1,602,901
United Oil Company, Florence, Colo	319,762

The total crude-oil consumption of the refineries directly owned by the Standard Oil Company above mentioned, together with the four companies just listed, was, in 1904, 56,157,097 barrels.

The refining of petroleum results in a very large number of commodities. The principal ones, however, are illuminating oil (ordinarily called "refined oil"), naphtha, lubricating oil, paraffin wax, fuel oils, and gas oil.

TRANSPORTATION FACILITIES.

As we have already stated, the crude oil carried to the Standard's refineries is substantially all transported by pipe lines. Some of the crude oil from Texas, however, is transported by steamship to New

York Harbor and Philadelphia for refining, and the Standard also transports some crude oil by steamship in California. Most of the vessels so used are owned by Standard companies. All of the refined oil of the Standard Oil Company is transported either by railroad or by water. The railroad transportation is substantially all done in cars of the Union Tank Line Company, a subsidiary corporation of the Standard Oil Company. The oil for export is principally transported in bulk by steamships and sailing vessels, but some is transported in cases to certain countries. The vessels which export the Standard's product are mostly owned by Standard companies. There is a good deal of coastwise transportation of refined oil products, principally to Atlantic seaboard towns, and some upon the Pacific. This also is principally in vessels of the Standard Oil Company.

MARKETING BUSINESS.

The marketing business is a very important branch of the Standard Oil business. It will be hereafter treated when we come to show its effect upon the monopoly, but we will now give a general description, principally with reference to the marketing of refined oil and naphtha, which two products are handled in the same way and are the most important.

The marketing business is kept entirely distinct from the other branches of the business. The companies marketing buy the oil at the several refineries, whence it is transported to main and substations of

the marketing companies scattered throughout the United States. It is unloaded into tanks at these stations, and from these stations is distributed, principally by tank wagons, to the retail dealers; in some places and in some instances the marketing companies deliver direct to the consumer either by tank wagons or in tin cans. The Standard also sells a large amount of bulk oil to peddlers, who peddle it out by tank wagons. It also sells considerable quantities in barrels and in cases. Of all the Standard's sales of refined oil and naphtha in the United States, about two-thirds are made in the tank wagons of the Standard itself.

The Standard organization has divided the United States into marketing districts, and there is an understanding, which is effectively carried out, that no other Standard company shall market in the territory thus awarded to a particular company. The following are the names of the companies marketing refined oil and naphtha, together with the territory in which they have the exclusive sale of such products:

Standard Oil Company of California, formerly Pacific Coast Oil Company: California, Washington, Oregon, Arizona, and Nevada. This territory was formerly covered by the Standard Oil Company of Iowa. (W. H. Tilford, vol. 1, p. 147; H. M. Tilford, vol. 2, p. 734.)

Continental Oil Company: Colorado, Utah, Montana, Idaho, Wyoming, New Mexico. (W. H. Tilford, vol. 1, p. 148; H. M. Tilford, vol. 2, p. 729.)

Waters-Pierce Oil Company: A small territory in Illinois around East St. Louis, the southern half of Missouri, Arkansas, Indian Territory, Oklahoma, Texas, Louisiana west of the Mississippi River, and the Republic of Mexico. (Pierce, vol. 3, p. 1068; W. H. Tilford, vol. 1, p. 149; Drake, vol. 2, p. 748.) Mr. Pierce says the agreement as to this territory was made between Mr. Pierce, representing the Waters-Pierce Oil Company, and the Standard Oil people, and it has always been maintained.

Standard Oil Company of Indiana: North and South Dakota, Minnesota, Wisconsin, Iowa (formerly Nebraska, but that State is now handled by the Standard Oil Company of Nebraska, a new corporation), Kansas, northern Missouri, Illinois, Indiana, and Michigan. (W. H. Tilford, vol. 1, p. 149; Drake, vol. 2, p. 747; vol. 13, p. 1077.)

Standard Oil Company of Kentucky: Louisiana east of the Mississippi River, Mississippi, Tennessee, Kentucky, Georgia, Florida, and Alabama. Formerly it had the western part of the States of North Carolina, South Carolina, and Virginia, and southwestern Ohio, southern Indiana, and southern Illinois, but these territories are now assigned to other Standard companies. (Westcott, vol. 2, p. 705; Maxon, vol. 3, pp. 1287 and 1288.)

Standard Oil Company of Ohio: This company has the State of Ohio. (Squire, vol. 6, p. 3124.)

Atlantic Refining Company: The States of Pennsylvania and Delaware. (Cutler, vol. 2, p. 845.)

Standard Oil Company of New Jersey: North and South Carolina, Virginia, West Virginia, Maryland, and New Jersey. (Donald, vol. 2, p. 802.)

Standard Oil Company of New York: New York and all of New England. (King, vol. 3, p. 1500.)

The defendants claim that the business of these marketing companies is not interstate business. The claim is based upon the following facts: The marketing company purchases the oil at the refinery. It ships it to various main and substations, either by water or by rail, in the tank cars of the Union Tank Line Company. There are a large number of these main and substations in each State; in fact, every town of any size has either a main or a substation. At these main and substations the oil is unloaded into tanks and from these tanks it is drawn off and distributed by tank wagons or barreled and shipped by barrels to the retail dealers in other towns. It is true, of course, that but a small percentage of the oil crosses the state line after it goes into the tank wagon or even after it goes into the tanks at these local stations; but the above description of the Standard's refineries, which are confined to 13 States (counting the affiliated refineries in Texas and Colorado), shows that necessarily nearly all of the oil is transported by the Standard companies across state lines before it is unloaded into the local tanks. Of course in these 13 States a considerable part of the oil sold is manufactured in the State. Even in those States, however, a large amount

of oil is shipped from other points. For instance, certain kinds of lubricating oils, which are principally made at Olean and Rochester, N. Y., and Franklin, Pa., and certain refined oils of a high grade made principally in Pennsylvania, are shipped into all the States. It will be unnecessary to more than refer to the examination and cross-examination of the various witnesses and to the stipulations to show how this is done. (King, vol. 12, direct, p. 677, cross, p. 693; McMillan, vol. 12, direct, p. 717, cross, p. 717; Collings, vol. 12, direct, p. 930, cross, p. 934; Drake, vol. 13, direct, p. 1077, cross, p. 1083; stipulation, vol. 17, pp. 3531 and 3532.)

Certain of these companies which have marketing stations are also engaged in the refining business, viz, the Standard of New Jersey, Standard of New York, Atlantic Refining Company, Standard of Ohio, Standard of California, and Standard of Indiana, their marketing business, however, being kept entirely separate; but the others, the Continental Oil Company, the Waters-Pierce Oil Company, and the Standard of Kentucky, are purely marketing concerns, obtaining their oil from other Standard refining companies.

VII. MONOPOLY AS EVIDENCED BY THE PERCENTAGE OF THE BUSINESS DONE BY THE STANDARD OIL COMPANY.

The Standard Oil Company, in its various branches of business, transporting, manufacturing, and selling of petroleum and its products, both for domestic and export trade, does an exceedingly large proportion of the business, varying from four-fifths to nine-tenths. We will give the figures by separate branches of the business.

PROPORTION OF CRUDE-OIL PRODUCTION CONTROLLED.

As already stated, the Standard Oil Company produces much less crude oil from its own wells than it handles through its pipe lines or manufactures. Nevertheless, in the two older oil fields, the Pennsylvania and the Lima-Indiana, the Standard directly produces a considerable proportion of the crude oil, and its proportion was formerly much higher than at the present time. In 1906, although the total production of crude oil by the Standard interests in the United States was only about one-ninth of the national output and about one-fifth of the amount of crude consumed by the Standard interests, nevertheless, in that year the Standard produced more than one-fourth of the total Pennsylvania oil produced (26 per cent) and more than three-tenths of the total Lima oil produced (31 per cent). (Petitioner's Exhibit 1043, which also gives

the figures for all the fields and for each year from 1902 to 1906.)

The Standard Oil Company, however, through its control of pipe lines, which will hereafter be shown, is in such a position that it is practically the only possible purchaser of crude oil in many parts of the oil fields, and its total purchases of crude in each field constitute a very large proportion of the production, except in the case of the Texas and California fields, where the oil is principally used for fuel. The proportion of the crude which the Standard purchases is practically the same as the proportion which it transports through its pipe lines.

PROPORTION OF PIPE-LINE BUSINESS CONTROLLED.

The exact percentage of the pipe-line business which is controlled by Standard interests could be obtained only for the Pennsylvania and Lima-Indiana fields. The Standard and Tidewater companies furnished the figures showing the amount of the crude of these fields which their pipe lines have taken from the wells, and they are contained in Petitioner's Exhibit 376, where they are compared with the total production of those fields. The correctness of these figures is testified to by Mr. Dredger, the Standard's statistician (vol. 3, p. 1405). Including the Tidewater Pipe Company, which as we show works in harmony with the Standard Oil Company, the Standard companies in the Pennsylvania field took into their pipe lines the following percent-

ages of the total production of crude oil and transported the same:

	Per cent.
1900	92.9
1901	92.9
1902	90.7
1903	89.5
1904	88.7
1905	87.3
1906	83.2

As all the oil is handled by pipe lines, this shows the percentage of the pipe-line business of this field which the Standard controls, and also substantially the proportion of the crude produced in that field which is bought by Standard interests.

Excluding the Tidewater Company, the Standard pipe lines in 1900 transported 88.4 per cent of the oil of the Pennsylvania field, and in 1906, 77 per cent.

In the Lima-Indiana field—the figures being arrived at by the same process of computation—the percentages of pipe-line business controlled by the Standard (including the Manhattan Oil Company, which we have heretofore explained, is owned and controlled by the Standard) were as follows:

	Per cent.
1900	92.9
1901	93.0
1902	92.5
1903	92.4
1904	93.5
1905	92.9
1906	89.6

There are, so far as appears from the evidence, no competing pipe lines in the Illinois field, and the Standard controls it all, but the witnesses from the Standard failed to produce figures showing the busi-

ness of the Ohio Oil Company, which operates the Standard pipe lines there.

We were unable to obtain the figures for the Mid-Continent field, but up to 1906 or 1907 there was substantially no pipe-line competition in that field, and it is safe to say the Standard's percentage was much larger than in the Pennsylvania field. Recently two other considerable pipe lines—the Texas and the Gulf—have been built from this field to the Gulf of Mexico, but the Standard still does far the larger part of the business.

Although the pipe lines controlled by the Standard Oil Company handle a comparatively small proportion of the crude oil produced in the Texas and California fields, we have already stated that the crude of these fields is chiefly used for fuel, and, especially until very recently, had little significance in the general markets of the country for refined oil products. The true significance of the Standard's control of pipe lines appears by considering the business of the four fields which we have already mentioned, rather than by comparing the Standard's total pipe-line business with the total production of crude oil in the country. It will be seen that, up to about the time this case began, the Standard had all but a complete monopoly of the pipe-line transportation in the four principal oil fields producing high-grade crude oil, namely, the Pennsylvania, Lima-Indiana, Illinois, and Mid-Continent fields.

Moreover, until the construction of the Gulf and Texas pipe lines from Oklahoma to the Gulf of

Mexico, just mentioned, all but one of the competitors of the Standard in the pipe-line business in these four oil fields had local gathering lines only, and did not operate what could be called "trunk lines." This one concern, the United States Pipe Line Company, had a pipe line from the Pennsylvania field to the Atlantic seaboard, which was then, and is still, the only independent pipe line reaching that seaboard.

The history of this United States pipe line will be given hereafter. It extends from western Pennsylvania to Marcus Hook, near Philadelphia. It is a comparatively small line, and it transports both crude and refined oil. The importance of this line, as compared with the Standard and the Tidewater, is illustrated by the percentage of the total shipments to the seaboard by the respective companies. Of the crude and refined oil combined transported by pipe line to the Atlantic seaboard, the Standard and Tidewater together during the seven years, 1900 to 1906, transported the following percentages (Pet. Ex. 378):

	Per cent.
1900	97.1
1901	97.5
1902	96.6
1903	96.0
1904	95.7
1905	95.5
1906	95.1

Excluding the Tidewater line, the Standard pipe lines transported, in 1900, 89 per cent of all crude oil transported to the Atlantic seaboard by pipe line, and in 1906, 87.4 per cent.

The full significance of the exceedingly large proportion of the pipe-line business controlled by the Standard Oil Company, and particularly of the business of pipe-line transportation to the seaboard, will be appreciated from a consideration of the evidence to be summarized later regarding the policy of the Standard pipe lines. This evidence shows not only that the Standard's pipe lines have failed and refused to act as common carriers, have evaded the act of Congress requiring them to do so, and that their profits are enormous, but it shows also the means by which the Standard Oil Company has sought to prevent the construction of competing pipe lines or to control those which have been constructed. (See vol. 2 of brief, pp. 67 to 150.)

PROPORTION OF REFINING BUSINESS CONTROLLED.

The Standard Oil Company, together with the affiliated Tidewater, Corsicana, Security, and United Oil companies, manufactured in 1904 83.8 per cent of the crude oil handled by all refineries in the United States. They produced 87.3 per cent of the refined illuminating oil and 82.9 per cent of the naphtha produced by all manufacturers in the United States. The table showing the business of these concerns, separately and combined, is Petitioner's Exhibit 394. It will be remembered that the Corsicana and Security are controlled by the Standard Oil Company; that all the product of the United Oil Company is marketed by the Standard, and there is no competition with this company; and that practically the

same is true of the Tidewater, in which, moreover, the Standard Oil Company owns 31 per cent of the stock.

Omitting, however, the Tidewater and the United companies, against which no decree was made in the court below, the Standard concerns (including the Corsicana and Security) consumed in 1904 79.3 per cent of the crude oil refined in the United States and produced 80.9 of the refined oil and 77.1 per cent of the naphtha.

The business of the Florence Oil and Refining Company, a small concern which sells all of its product to the Standard Oil Company, is not included in the figures above mentioned, because the information was not procured before the testimony of the Government was closed. The amount of business of each of the five companies named above was furnished by the company and admitted in evidence without objection, and the total for the country was taken from the census. The correctness of the computations was verified by Mr. Dredger, an employee of the Standard Oil Company. (Petitioner's Exhibits 392 and 393, Dredger, vol. 3, p. 1414; Petitioner's Exhibit 363, vol. 3, p. 1392; Petitioner's Exhibits 365, 366, and 369, Bayne, vol. 3, pp. 1393–1395.)

STANDARD'S PROPORTION OF SALES OF OIL IN THE UNITED STATES.

The Standard Oil Company keeps what is known as a statistical department, in which, among other things, are kept statistics showing the percentage of the total sales of oil made by the Standard and by

independent companies, respectively, in each of the Standard's marketing divisions or territories in the United States, Canada, and Mexico. From these statements, for a series of years, tables were prepared and introduced in evidence, showing the percentage of the sale of refined oil and of naphtha by competitors in each marketing division from 1897 to 1906. The accuracy of these tables was testified to by Mr. Dredger. (Petitioner's Exhibits 388, 389, Dredger, vol. 3, p. 1412, et seq., 1479 et seq.)

From his testimony and the testimony of other witnesses it appears that the first column in these exhibits, under the heads "Kentucky," "Indiana," "Waters-Pierce," "San Francisco," "Denver," etc., refers to large territories of the several marketing companies already described, or to subdivisions thereof, which are designated on the books by these names, rather than to the individual cities or States. For instance, "Kentucky" means all the territory of the Standard Oil Company of Kentucky; "Denver" means all the territory of the Continental Oil Company; "San Francisco" all the territory of the Standard Oil Company of California, as heretofore explained. For the last two years the Waters-Pierce territory is not included; the Standard Oil officers claimed that they did not have the figures. This we suppose is owing to their attempt to show that that company was independent, and their efforts to keep its control secret. Averaging all over the United States, Canada, and Mexico, the refined-oil business

done by the independents and the Standard, respectively, is as follows:

	Independent.	Standard.
	Per cent.	*Per cent.*
1897	11.1	88.9
1898	10.4	89.6
1899	9.9	90.1
1900	11.5	88.5
1901	10.7	89.3
1902	10.7	89.3
1903	11.9	88.1
1904	12.7	87.3
1905	12.7	87.3
1906	15.2	84.8

This shows that the Standard Oil Company controls from five-sixths to nine-tenths of the marketing of refined oil in North America; the proportion for the United States is substantially the same.

Referring to Petitioner's Exhibit 389, it will be seen that the Standard has a still larger percentage of the business in naphtha, the independents doing in the various years between 1897 and 1906 only from 7.7 per cent to 13.6 per cent, the figure for 1906 being 13 per cent. It will be seen from these tables that, taking the United States as a whole, the Standard has a practical monopoly of the oil business.

It will also be seen, however, that the percentage of business done by the independents varies very materially in the several territories, and that in many their proportion is exceedingly small. For instance, in the entire Denver division, including five States

and one Territory in the Rocky Mountain region, the percentage of independent business was only, from 1897 to 1906, from 0.2 to 1.1 per cent. In the San Francisco territory, including the Pacific Coast States, during the same period, it ranged from 3.5 to 8.4 per cent. In the Waters-Pierce territory, including the Southwestern States and Mexico, from 6.7 to 10.4 per cent. In the Providence branch of the New England territory, including Rhode Island and a considerable part of Massachusetts, as described by King (defendants' testimony, vol. 12, p. 678), during said period it ranged from 1.5 per cent to 6.1 per cent. In the Boston district, including the eastern part of Massachusetts, from 6.6 to 9 per cent. In New York City, including Long Island, from 3.9 to 8.9 per cent. For the Standard Oil Company of Kentucky, including all of the Southern States south of the Ohio River and east of the Mississippi River, except North Carolina, South Carolina, Virginia, and West Virginia, it ranged from 6.7 to 12.4 per cent. The largest percentage of business done by independents is in the Montreal territory in Canada and in Ohio and Pennsylvania.

Substantially the same variation exists in the naphtha trade, except that the Standard does a larger percentage of the business. (Petitioner's Exhibit 389.)

CONTROL OF RAILROAD LUBRICATION.

No statistics as to the general trade in lubricating oil were procured, but it appears that the Galena-Signal Oil Company, the majority of the stock of

which is owned and controlled by the Standard Oil Company, does from 95 to 97½ per cent of the lubricating of steam railroads in the United States. (Steinbrenner, vol. 1, pp. 414–416.) In fact, the only railroad that Mr. Steinbrenner (the auditor of the Galena-Signal Oil Company) could think of that was not lubricated by the Galena-Signal Oil Company at the time he testified was the Tidewater Railroad, owned chiefly by the late Henry H. Rogers, one of the Standard Oil men.

STANDARD'S PROPORTION OF EXPORT BUSINESS.

The Standard Oil Company, from 1900 to 1906, did the following percentages of the export business in refined oil (Petitioner's Exhibit 377):

	Per cent.
1900	90.8
1901	90.5
1902	89.3
1903	86.2
1904	86.9
1905	87.9
1906	86.3

This statement includes only the oil exported by the Standard Oil Company itself. It includes the 77 per cent of the Tidewater's export oil which is sold to the Standard for export, and such product of the independents as the Standard takes from their refineries for export. The importance of the export trade is seen in the fact that, of a total production of 27,135,094 barrels of illuminating oil in 1904, 15,227,163 barrels were exported, or about 56 per cent. (Petitioner's Exhibits 377 and 394.)

SUMMARY.

These most important products, refined oil and naphtha, have been taken as a fair indication of the control of the business of the Standard Oil Company, as all manufacturers produce substantially the same number of products and the same percentages from crude oil. It will thus be seen that the Standard is doing from 85 to 97½ per cent of the business of transporting, manufacturing, and selling of petroleum and its products in this country. As we will hereafter show, this, in connection with the manner in which the Standard has done its business, through unfair competitive methods, has given it the absolute control of the prices of petroleum and its products in this country, a control which we will now show has produced exorbitant and monopolistic profits.

VIII. PROFITS OF BUSINESS AND PRICES AS INDICATING A MONOPOLY AND ITS EFFECTS.

Evidence of the monopoly of the defendants is shown in the enormous earnings of this combination. These earnings are stated in detail in volume 2 of the brief, pp. 4 to 35. They may be summarized as follows: The Standard Oil Trust and the Standard Oil Company, on an investment of $69,024,480.50, which is all that has been put into the business except out of its own surplus earnings, had earned up to the end of 1906, $838,783,783.16. Adding the profits of 1907 and 1908 (of which we have no accurate statement, but from the testimony of Mr. Rockefeller we may assume them to be as much as the profits of 1906), we have substantially a billion dollars earned by this company in twenty-seven years, with an original investment of about $69,000,000.

But the real significance of these earnings is seen when we take the last ten or twelve years, after the monopoly had been well established. For the ten years ending with 1906 the earnings were $598,226,525.66, or practically $60,000,000 a year on the investment of $69,000,000, the capitalization being $97,250,000 part of the time and a little more the rest of the time.

The Standard Oil Trust and the Standard Oil Company paid dividends from 1882 to 1906 amounting to $548,436,446.87, an average of 24 per cent per year

on the capitalization. During the last eleven years, ending with 1906, the annual dividends were from 31 to 48 per cent, being 48 per cent in 1900 and 1901. This, however, represents but little more than one-half of the earnings, for the percentage of net earnings to the capital stock during the last eight years has been from 57 to 84.5 per cent. (Computed from Petitioner's Exhibits 10, 252, 259, and 399; see brief, vol. 2, pp. 8 to 15.)

But it may be said that this is not a fair comparison, that the rate of earnings should be based upon net assets, and that the company is greatly undercapitalized. It is capitalized for about $15,000,000 more than the parties themselves valued the property and assets which they put in, aside from surplus earnings. If the court were regulating the earnings of a public-service corporation there would be some ground for the argument that the net assets should be the basis of calculating the percentage of earnings; but what we are trying to arrive at is whether the Standard Oil Company is substantially a monopoly, and whether its prices are monopolistic or are the prices incident to a competitive business. On this basis we must remember that the surplus of the company was made out of profits in excess of a very high rate of dividends, in recent years amounting to as much as 40 to 48 per cent.

This court lately held, in the Consolidated Gas case, that 6 per cent was a reasonable rate of earnings for the Consolidated Gas Company. We very much doubt

if there is more risk in the Standard Oil business than in the Consolidated Gas. The mere magnitude of the business and its wide-reaching character—having its markets throughout the entire world and unaffected by local conditions, enabling it to make up in one territory what it may lose by reason of some local competition in another, and having a wide variety of products, enabling it to make up on one what it loses on another—give it a stability of which there is no equal in the manufacturing business in this country. The business of railroads is often spoken of as a stable business and a safe investment, on which a return of 6 per cent is ordinarily considered reasonable. But the railroad business is far more fluctuating and subject to the effect of business depressions than the business of the Standard Oil Company. Even, however, considered on a basis of the relation of net earnings to net assets, the rate of earnings of the Standard Oil Company for the last ten years has on the average been 25.2 per cent per year. (See table, brief, vol. 2, pp. 10–11.)

In the foregoing we have stated the aggregate profits and dividends of the Standard Oil Trust and the Standard Oil Company of New Jersey, but the effect of the monopoly of this combination will be more fully appreciated when we come to consider the profits of those companies engaged exclusively in the business of purchasing, transporting, manufacturing, and selling petroleum and its products in this country, as distinguished from its export and marketing busi-

ness in foreign countries. Tables on pages 17 to 21 and facing page 24 of volume 2 of the brief show the rates of profit of each individual company in the combination (except a few minor concerns for which the information does not appear in the record).

PROFITS OF THE PIPE LINE COMPANIES.

From these detailed tables it appears that the Standard's pipe line companies, the larger ones in particular, are earning enormous profits. Taking all of the companies the profits from 1899 to 1906 usually ranged from 25 to 100 per cent on the capital stock per annum. During the same period the rate of profits on the total net assets of these companies ranged, in most cases, from 35 to 153 per cent. But some of these companies hold a large amount of assets (especially cash in bank and loans) not used in the pipe line business or necessary to it on which the rate of return is much less than on those assets which are used in the pipe line business. Comparing the net earnings from the pipe line business proper with the net assets in the pipe line business alone, the rate of earnings is very much higher, ranging for most of the companies during the years from 1899 to 1906 between 50 and 278 per cent. The following table shows for the years 1900 and 1906 the rate per cent of profits of the pipe line companies, based upon the profits and the net assets of the pipe line business proper and excluding the profits and net assets belonging to other business.

	Percentages.	
	1900.	1906.
Buckeye Pipe Line Co	51.7	92.6
Eureka Pipe Line Co	79.9	92.6
Indiana Pipe Line Co	166.3	94.1
New York Transit Co	109.1	76.9
Southern Pipe Line Co	278.1	102.1
Northern Pipe Line Co	6.6	47.9
Crescent Pipe Line Co	.....	22.7
Southwest Pennsylvania Pipe Lines	71.5	101.8

In volume 2 of the brief, pages 22 to 27 and 137 to 143, a discussion is given of the fact that according to one set of the balance sheets of the Southern Pipe Line Company, which were put in evidence, the apparent rate of profit was in several years relatively low, and that losses appeared in 1900 and 1904, whereas the actual profits of the pipe-line business proper were exceedingly large, being at rates ranging from 102.1 to 278.1 per cent in the several years. It was found that in each of the years 1899 to 1905, the balance sheets of this company indicated a large payment to the account of P. S. Trainor, the total of these payments aggregating no less than $22,131,160.12. It was admitted by the controller of this pipe-line company, Mr. Chesebro (vol. 2, pp. 633–636), that this payment was not an operating expense, but that the amount was taken out of the profits; and indeed the set of operating balance sheets separately introduced in evidence (Petitioner's Exhibits 216–219) indicated no such payments, but showed profits far

greater than those on the first set of balance sheets. (Petitioner's Exhibits 67–74.)

The Government made extraordinary efforts to ascertain from witnesses the significance of this payment to Trainor. Mr. Chesebro, the comptroller of the Southern Pipe Line Company, Mr. Trainor himself, Mr. William G. Rockefeller, a director of the Southern Pipe Line Company and the treasurer of the Standard Oil Company of New York, Mr. A. H. Brainerd, the comptroller of the Standard Oil Company of New York, Mr. John D. Archbold, and several other witnesses were all questioned regarding these payments, but could give no explanation. The Government was forced to the conclusion that it was designed in some way to conceal the enormous profits of this pipe line company, or that the money was paid out for unlawful purposes. It is inconceivable that the officials of the companies directly concerned were so ignorant regarding the purpose of these transactions as they claimed to be.

It may be noted further that in computing the rate of profit of the New York Transit Company for 1900 on its pipe-line business proper, as stated in the above table, we have combined the profits and assets of the Crosstown pipe line with those of the New York Transit Company. The reason for doing so is set forth in volume 2 of the brief, pages 136, 137. Briefly stated, it appeared from the evidence that the Crosstown pipe line is a short line owned by the Standard Oil Company of New York, extending from the middle

of the Hudson River to Brooklyn, crossing the city of New York, and valued on the books of the owning company at $84,833.42. (Petitioner's Exhibit 284–A; Chesebro, vol. 2, 643–877.) This line was until 1906 operated by the New York Transit Company as part of a through trunk line, and the Transit Company paid to the Standard of New York an annual rental for its use ranging from $438,191.03 in 1905 to $1,191,145.86 in 1901 (Petitioner's Exhibits 101–107), or in each year a rental from five to fourteen times the total value of the line. Here again we were forced to the conclusion that this ridiculously great rental payment was intended to conceal part of the profits of the New York Transit Company. It was therefore obviously proper to take the total investment, both in the New York Transit and the Crosstown, and the combined earnings of both as a basis for computing the rate of profit.

PROFITS OF THE EXCLUSIVELY DOMESTIC REFINING AND MARKETING COMPANIES.

The refining and marketing companies exclusively engaged in the American trade have also enormous profits, with the exception of the Standard Oil Company of Nebraska, which only lately has been organized. (See tables in volume 2 of brief, page 17, and facing page 24.) The profits of these companies on their capital stock in 1906 in most cases exceeded 87 per cent. In the case of the Standard Oil Company of Indiana the profit on its capital stock of $1,000,000 was 1,051 per cent in 1906.

The Standard Oil Company of Indiana is the largest manufacturing company of the combination, making products for the domestic trade exclusively. It owns large refineries at Whiting, Ind., and is also a marketing company in a large territory. All of the money ever invested in this company except from its own surplus earnings was $1,000,000. It commenced business in 1890, and in addition to its dividends it has surplus assets of over $24,000,000 derived from net earnings. The Continental Oil Company, which is an important marketing company and sells its oil in a district where there is practically no competition (to wit, the Rocky Mountain States), earned in 1906 191.7 per cent on its capital stock; the Solar Refining Company, 251.7 per cent; the Standard Oil Company of Kentucky (the marketing company throughout the Southern States south of the Ohio River, where there is little competition), 130.8 per cent. We have no statement of the net assets or of the total profits of the Waters-Pierce Oil Company, but we have a statement of the dividends for certain years. In 1904 the dividends were 600 per cent. This company is the Standard's exclusive selling company in certain Southwestern States and the Republic of Mexico. Even on their net assets, which in most cases exceed the capital stock, the profits of the above-mentioned companies from 1899 to 1906 in most cases exceeded 30 per cent per year, and in many instances exceeded 40 per cent.

The following statement shows for 1906 the profits of each of the refining and marketing companies

doing business exclusively in the United States, and the rate of profit on capital stock and on net assets:

Name.	Profit.	Rate of profit on—	
		Capital.	Net assets.
		Per cent.	*Per cent.*
Standard Oil Company of Indiana..	$10,516,082.75	1,051.6	43.2
Standard Oil Company of Iowa...	873,977.78	87.4	88.5
Standard Oil Company of Kansas..	974,644.49	97.5	88.9
Standard Oil Company of Kentucky	1,307,780.61	130.8	31.0
Standard Oil Company of Ohio....	1,009,526.59	28.8	21.0
Standard Oil Company of Nebraska	79,181.21	13.2	11.7
Continental Oil Company.....	575,043.98	191.7	44.2
Solar Refining Company.....	1,258,519.25	251.7	33.9

The following statement shows similar figures for the leading foreign companies:

Name.	Profit.	Rate of profit on—	
		Capital stock.	Net assets.
		Per cent.	*Per cent.*
Anglo-American Oil Co.....	$1,262,551.37	25.9	11.1
Deutsch-Amerikanische Petroleum Gesellschaft.....	1,313,852.82	18.4	13.6
Societa Italo-Amer. pel Petrolio...	321,182.47	33.3	15.9
American Petroleum Co.....	1,353,443.17	42.6	27.9
Actien Gesellschaft Atlantic.....	120,096.55	43.9	26.1
Colonial Oil Co.....	1,256,724.38	502.7	41.2
Soc. Romano-Americana.....	63,140.60	2.6	2.6
Imperial Oil Co. (Canada).....	1,082,363.70	27.1	18.4

It appears from these statements that the profits of the foreign companies are very much less than those of the domestic companies. For instance, the

Anglo-American Oil Company, which is the principal company doing an export business and which is the holding company for the foreign companies generally, earned in 1906, 25.9 per cent on its capital stock and 11.1 per cent on its net assets. The principal German marketing company of the Standard, which ranks next to the Anglo-American in magnitude, earned 18.4 per cent on its capital stock and 13.6 per cent on its net assets. The Soc. Romano-Americana, doing business in Roumania, earned only 2.6 per cent on its capital stock and the same on its net assets. The only foreign company whose rate of profit at all approaches that of the American companies is the Colonial Oil Company, which does business principally in South Africa, and which the testimony shows has a contract with all the steamship lines giving it a rate of freight less than one-half that given its competitors. The evidence in relation to this discrimination will be found stated in volume 2 of this brief, pp. 382–84. It will thus be seen that those companies engaged in the domestic business are earning rates of profit decidedly in excess of the average rate on the entire business, which is reduced by the lower rate on the foreign business.

Defendants' counsel contended in the court below that the lower percentage of profit of the foreign companies has no significance because they are only marketing companies, while some of the domestic companies are both refining and marketing companies and would naturally make a larger profit. It

is easy to see that a company which is engaged in both refining and marketing might expect to make a larger profit *per gallon* than one which is engaged only in marketing, but it is very difficult to see why it should make a higher *rate per cent of profit on its net assets*. Moreover, those domestic companies which are engaged exclusively in marketing, namely, the Standard of Iowa, the Standard of Kentucky, and the Continental, show a far higher rate of profit than the foreign companies.

In the court below counsel for defendants assumed that the rate of profit per gallon on oil sold abroad was the same as that on oil sold in this country, and to show this introduced in evidence the refinery prices for domestic oil and the seaboard prices for export oil. The simple answer to this is that these prices are merely arbitrary prices which the Standard refining companies charge to their selling companies. The final price which the retail dealer pays, both in the United States and in foreign countries, is not shown in this comparison, and we have no information as to the final prices abroad save the inferences to be drawn from the fact that the profits of the foreign marketing companies are much lower than those of the domestic companies.

Defendants' counsel also contended that the Government's evidence of a combination in restraint of trade and of unfair and monopolistic methods is practically confined to the domestic illuminating-oil trade, and that the profits on this trade amount to

only from $14,000,000 to $18,000,000—a small proportion of the total profits of the Standard. As a matter of fact, the court will find from an examination of the detailed statement of facts in volume 2 of this brief that the Government's evidence covers fully the entire business of the pipe lines and refineries of the Standard Oil Company, which produce its entire output for both domestic and foreign trade, and also covers its entire domestic marketing business, including the principal by-products as well as illuminating oil. It is conceded by the defendants that illuminating oil is the most important product, and we deliberately refrained from introducing as much detail with regard to the minor products in order to save unnecessary cumbering of the record; but we did introduce sufficient evidence to show clearly that those conditions with respect to illuminating oil prevail generally, if not universally, with respect to all other branches in the domestic trade. While it is true that the illuminating oil sold in the United States by the Standard amounts to only about 17 or 18 per cent of the total products of its refineries, nevertheless about 64 per cent of the total product of its refineries is marketed in the United States. (Vol. 2 of brief, p. 34.)

Even, however, were the evidence confined to the domestic trade in illuminating oil, it would still cover a much more important fraction of the business than counsel for defendants contend. Their calculation of the profits on illuminating oil sold in the domestic trade rests on the false assumption that the profits

on illuminating oil are no higher than the profits on the other products taken as a whole, and the further false assumption that the profits on illuminating oil in the United States are no higher than in foreign countries. All the evidence goes clearly to show that both of these assumptions are entirely incorrect, and, in fact, the defendants in their briefs below referred to practically no evidence even in the slightest measure tending to uphold them.

PROFITS PER GALLON.

The enormous profits of the defendants appear also from the statistics of the profits per gallon. It appears from the testimony of independent refiners that half a cent to a cent a gallon on the entire output is a very good profit in the refining business. (Bayne, vol. 2, p. 800; Westgate, vol. 6, p. 2879.) Compare this with the profit of the Standard Oil Company on its entire business, including the less profitable export sales, and it will be found that the Standard's profits averaged in 1903 3.7 cents per gallon on all crude oil handled by its refineries. This, to be sure, was a year of maximum profits, but for the years 1900 to 1906 (taken together) they averaged substantially 3 cents per gallon. (Defendants' Exhibit 267; Petitioner's Exhibit 10.) On the marketing of refined products alone, without counting the profits of pipeline transportation or refining, the profits of the Standard companies in the United States were 1.64 cents per gallon in 1906. Some of the marketing companies of the defendants make on the marketing

business alone a profit ranging as high as 4 and 5 cents per gallon. The Continental Oil Company, in the Rocky Mountain States (where there is practically no competition), during the years 1899 to 1906 made on the marketing of refined illuminating oil profits ranging from 3 to 4.98 cents per gallon.

CONTROL OF THE PRICES OF CRUDE OIL AND ITS PRODUCTS IN THE UNITED STATES.

So far as the crude oil is concerned, it appears that in the Pennsylvania, Lima-Indiana, and Mid-Continent fields, which are the principal fields producing oil suitable for refining, the Standard Oil Company absolutely fixes the price, publishes it daily, and its price is the public market price of crude oil. The producer has nothing whatever to say about it. It appears by the testimony that the Standard Oil Company produces only about 25 per cent of the crude oil which it manufactures. The rest, of course, it buys from a large number of independent producers. The significance, therefore, of fixing the price is apparent. It shows the strength of this monopoly. P. S. Trainor, the purchasing agent of the Standard for crude oil, admitted that, in consultation with Mr. Archbold, he fixed the price of crude oil, which was published from day to day. (Trainor, vol. 2, pp. 651, 652–659.)

Mr. Archbold undertook to explain the Standard's manner of fixing the price. He said they took into consideration the availability of the oil, the yield of the various products, the different kinds of crude,

the volume of production, and the world's supply, but he admitted on cross-examination that he and his associates were the only ones who took it into consideration. No one else had anything to do about it. (Vol. 17, pp. 3235, 3239, and 3428.)

This was amply established by the testimony of other witnesses, Mr. Benson, the head of the Tidewater Company (vol. 1, p. 224), Mr. Tarbell, head of the Pure Oil Company (vol. 1, p. 469). See volume 2 of brief, pp. 54 to 61.

Prior to 1895 there were oil exchanges at Pittsburg, Oil City, and New York, where oil was bought and sold the same as other products of the country. These exchanges have been discontinued for the reason that the Standard announced about 1895 that it would no longer purchase oil on the basis of the prices quoted thereon, and from that date to the present time the Standard has named the price. (Trainor, vol. 2, pp. 658; Benson, vol. 1, p. 224; Asche, vol. 2, p. 861.)

As to the refined product, it appears that the price of export oil is named daily by the New York office of the Standard Oil Company and published in the New York papers, and this is the price followed by the New York Produce Exchange. (Asche, vol. 2, p. 861; Benson, vol. 1, p. 225; Tarbell, vol. 1, 469; Lee, vol. 6, p. 3160.)

As to the domestic market for refined oil, naphtha, and other products, there is no standard price at central markets. We shall show later how the Standard markets its products directly to retail

dealers and consumers at each town throughout the country; that by a system of competitive methods it has forced the small amount of competition to practically accept the price the Standard fixes; that wherever competitors obtain a foothold and market any considerable amount of product in a locality the Standard immediately cuts the price below a profit until the business of the competitor has been reduced to a nominal amount, whereupon the Standard puts up the price, and at the same time maintains high prices wherever there is little or no competition. This system, which will be elaborated upon later in the brief, the testimony clearly shows enables the Standard to control the price of the product through practically all of the United States.

INCREASE IN THE PRICES OF THE PRINCIPAL PRODUCTS.

It has usually been claimed for large combinations in this country that they have increased business and decreased the cost to the consumer, but in the case of the Standard Oil Company it has, during ten or fifteen years (which is as far back as we could obtain the figures), actually increased the prices to the retailer, and this a good deal more than the prices of other products throughout the country have increased, although the price of its raw material and the cost of manufacture and sale during these years has increased very little, if any.

Take, for instance, the combined product of refined oil, naphtha, and paraffin wax (three of the principal products of crude oil). The average price

of these three commodities has increased, between the four years 1895 to 1898 and the four years 1903 to 1906, 46 per cent, while the average increase of all other principal commodities in the United States combined represents only 26.6 per cent; and refined oil and naphtha combined, without counting paraffin wax, have increased 49 per cent. (Petitioner's Exhibit 985.) The Government showed conclusively that the comparisons instituted by the defendants' witnesses between the prices for the year 1895 and the prices for later years were wholly unfair and misleading, for the reason that the prices of petroleum products, on account of a marked increase in the price of crude oil, were altogether exceptionally high in 1895, both as compared with years immediately preceding and those immediately following. Consequently, the only fair comparison which can be made is to take the average for a group of years at the beginning and for a group of years at the end of the period for which data were obtained. Furthermore, there is no evidence to show how much the cost of manufacture (including raw materials) of other commodities has increased, while in the case of the Standard Oil the testimony shows there has been no material increase in such costs. This is evident also from the increase in the profits of the Standard Oil Company per gallon of crude oil handled and from the increase of profits of the marketing companies. The profit of the Standard Oil Company per gallon of crude oil consumed has increased from 1.78 cents in 1882 to 3.05 cents in 1906, and between 1893 and

1906 the profit has increased from 0.90 cent to 3.05 cents. (See table for each year, brief, vol. 2, p. 52.) The marketing companies' profits have also increased in substantially the same way. We have not the marketing companies' profits prior to 1895, but from 1895 to 1906 the profits per gallon on illuminating oil increased from 1.20 cents to 1.50 cents per gallon, and from 1898 to 1906 from 0.88 cent to 1.50 cents. The profits on naphtha have increased from 1.06 cents in 1895 to 1.72 cents in 1906, and nearly doubled since 1898. (Defendants' Exhibits 293 B and 293 C.)

It is significant that with all the resources of the defendants they have never undertaken to show in this case by statistics that they have not during all these years increased the price of oil to the consumer, and we believe that Mr. Archbold's guarded claim to this effect, which he supported by no statistics, is of no value. It can not be shown that this monopoly has cheapened the product to the consumer; in fact, the only places in the United States where the product has been cheapened is where the independents are selling.

IX. VARIOUS MEANS USED BY THE STANDARD OIL COMPANY TO MONOPOLIZE COMMERCE.

Unquestionably the principal means used by the defendants to monopolize and restrain trade and commerce in petroleum has been the combination of previously independent concerns in the manner fully set forth hitherto in this brief. The opinion of the court below rests practically upon the fact of combination. Nevertheless, the defendants have strengthened the monopolistic power of their combination by various other means which we desire very briefly to call to the attention of the court, both because we conceive that these means are themselves violations of section 2 of the Sherman Antitrust Act and because they throw light upon the intent of the combination to secure and maintain a monopoly.

These means, other than the combination itself, may be classified as follows: Control of pipe lines and abuse thereof; railroad discrimination; unfair competition; contracts in restraint of trade with concerns outside the combination proper.

CONTROL AND ABUSE OF PIPE LINES.

The Standard has practically a monopoly of the pipe-line transportation of crude oil from the principal oil fields of the United States. With the exception of the pipe lines controlled by the Pure Oil Company, to wit, the United States Pipe Line, from

western Pennsylvania to Marcus Hook, near Philadelphia, and its gathering lines, there has until very recently been practically no competition in the United States in pipe-line transportation.

We have seen how during the period from 1874 to 1882 the Standard obtained control of practically all of the lines then existing and brought them together under the control of the National Transit Company. Ever since it has sought to prevent or destroy competition in the pipe-line business. We will briefly call attention to some of its efforts in this direction.

The Standard first sought to control the Tidewater Pipe Company, then the only other pipe line to the seaboard.

It appears that the Tide Water Oil Company is a large corporation having a capital stock of $19,967,000, and owns refineries at Bayonne, N. J., on New York Harbor; that this company owns the stock of the Tide Water Pipe Company, which amounts to $625,000. The latter company has a pipe line from western Pennsylvania to the refineries of the Tide Water Company at Bayonne. With the exception of the Standard, this is the only pipe line reaching New York Harbor. The Standard owns 31 per cent of the stock of the Tide Water Oil Company. The history of the struggle of this company to reach the seaboard with its pipe-line, and of the Standard's fight to obtain control of it, is given in detail in volume 2 of the brief (pp. 68 to 74). It is sufficient here to say that the Standard purchased and acquired crude-oil wells and refineries connected with

this concern in order to cut off its supply and its custom, and that it bought stock therein and undertook to get control of the company; that although it failed in this attempt the Standard made a contract with the Tide Water in 1884 to divide all the business of transporting, manufacturing, and selling petroleum in the United States, whereby the Tide Water Company was to have 11½ per cent and the Standard 88½ per cent; that this contract was in existence until a short time after the Sherman Act was passed, when it was canceled as of a prior date; that since that time the Standard has sold the Tide Water Company a large amount of its crude-oil supply and has purchased and marketed substantially all of its product; that the Tide Water has never increased its business and is not to-day a competitor of the Standard companies.

After this arrangement with the Tide Water the Standard bought up the Pittsburg Pipe Line and still later the Western and Atlantic Pipe Line, these lines being then its most important competitors in this branch of the business. (Brief, vol. 2, pp. 190–192.)

Later, between the years 1892 and 1896, the Standard used every possible means to defeat, destroy, or control the Producers' and Refiners' Oil Company and the United States Pipe Line Company, affiliated concerns which projected a local system of pipes and a line to the seaboard. These are fully described in volume 2 of this brief, pages 75 to 90. The evidence shows that the Standard Oil Company in every way possible obstructed the construction of these lines,

purchased rights of way across the proposed route, inspired railroads to oppose crossing their lines, and finally succeeded in preventing the United States pipe line from crossing the State of New York to the Hudson River or the State of New Jersey to the New York Harbor, so that it was compelled to pull up a large mileage of its line and reconstruct it to Philadelphia. The Standard also undertook to destroy the business of the refineries connected with these pipe lines by manipulating prices of oil. Finally the, Standard undertook to buy up these lines. It succeeded in purchasing a part of their stock, but failed to get control. It now owns $393,000 out of $1,200,000 of the capital of the United States Pipe Line Company.

Failing in its attempt to get control of the United States Company and the affiliated concerns, the Standard purchased in 1895 the only other competitive line to the seaboard, the Crescent Pipe Line, constructed a few years before, and the Mellon lines connected therewith, which constituted a large gathering system in southwestern Pennsylvania and West Virginia. The parties connected with this enterprise had also commenced the construction of a refinery at Marcus Hook. In order to purchase this line the Standard Oil Company in 1895 succeeded in obtaining the repeal of a law of Pennsylvania prohibiting the purchase of parallel and competing pipe lines. It will thus be seen that with the exception of the United States line the Standard controls all of the pipe lines to the Atlantic seaboard.

We have seen also how the Standard got control of its principal pipe-line competitors in Ohio and Indiana, to wit, the Manhattan Oil Company and the Indiana Pipe Line and Refining Company. This gives the Standard practically a monopoly with the exception of the Oklahoma or Mid-Continent field. It had a monopoly there till within the last two years, when two other pipe lines were built from that field to Port Arthur, one by The Texas Company and the other by the Gulf Refining Company.

By such means the Standard, with the affiliated Tidewater Company, controls about 95 per cent of the transportation of crude oil to the Atlantic seaboard, which by reason of the large percentage of oil exported gives it a tremendous advantage.

In order to more effectually control this transportation to the seaboard, the National Transit Company entered into a contract with the Pennsylvania Railroad Company on August 22, 1884, which contract was not canceled until 1905, whereby the Transit Company guaranteed that of the total crude and refined oil transported by all existing carriers to the seaboard the Pennsylvania should have 26 per cent, the National Transit to turn over to the railroad enough crude oil to make up any deficiency. By an agreement of the same date it was provided that instead of delivering the oil to the Pennsylvania Railroad the Transit Company would carry the oil through its own pipe lines and pay the railroad company nearly three-quarters of the rate, the Pennsyl-

vania performing no services whatever. (Exhibit 14 to petition, record, vol. A, p. 160.) Mr. Archbold testified that this eliminated all possible inducement for the Pennsylvania Railroad Company to compete for this business. (Vol. 6, p. 3253.)

The Standard Oil Company has not only purchased competing pipe lines and tried to prevent the construction of competing lines, but has refused to permit the use of its lines as common carriers, as required by the laws of the various States and the act of Congress, or has so restricted their use as to render the laws nugatory. The evidence on this subject is fully set forth in volume 2 of the brief, pages 95 to 149.

The defendants admit that the pipe lines in Ohio, Pennsylvania, New York, and West Virginia are by the laws of those States required to be common carriers, and on the passage of the Hepburn bill requiring pipe lines engaged in interstate commerce to act as common carriers these companies filed tariffs, but the provisions of the tariffs so filed prevent any independent company from shipping thereunder, for two reasons: First, the point of delivery was named at places where there were no independent refineries; second, the minimum amount of oil that would be transported was so large that no independent refiner could use them. It further appears that just prior to the passage of the Hepburn bill, when it was under public discussion, the pipe lines organized under the laws of Pennsylvania and New York,

owning lines in New Jersey and Maryland, which reached the seaboard at New York Harbor and Baltimore, transferred their lines in those States to the parent company, the Standard of New Jersey, in order to evade the provisions of the Hepburn bill, and prevent independent refiners shipping oil to the seaboard. They then established delivery stations at inaccessible points on the state lines bordering New Jersey and Maryland and made their tariffs apply to these points to which no one wished to ship oil, while the Standard of New Jersey, owning the lines thence to the seaboard, contends that these are private lines and refuses to act as a common carrier. The pipe lines which were not, by the laws of the several States in which they were organized, common carriers, have wholly failed to comply with the federal act and have filed no tariffs and carry no oil for others. These include the only pipe lines of the Standard from the great new Illinois and Mid-Continent fields.

Not only have the Standard pipe line companies evaded the law which requires them to act as common carriers, but where they have pretended to comply they have established rates so excessive as to preclude any independent company from using them. While these same rates are, of course, charged to the Standard companies, it is merely a transfer of money from one pocket to the other.

Evidence was taken in this case showing the net assets of each pipe line, the charges per barrel for

transporting, and the operating expenses per barrel; and this testimony conclusively shows that the rates are from three to six times a reasonable charge. Allowing 10 per cent income upon the value of all the net assets actually used in the pipe-line business and 5 per cent additional for depreciation, the following would be reasonable rates for the several trunk lines as compared with the actual charges, for the year 1903:

	Actual average charge per barrel.	A reasonable charge.
	Cents.	*Cents.*
Indiana Pipe Line	29.85	4.31
Crescent Pipe Line	43.01	11.47
Buckeye Pipe Line Co. (Cygnet Division)	13.08	4.20
New York Transit Co.:		
New York Division	42.14	10.01
Buffalo Division	22.85	3.84
National Transit Co. (Millway and Bayonne Division)	16.80	5.16
Bear Creek and Kane Pipe Line	4.51	1.64
Pennsylvania Pipe Line	38.98	12.58
Southern Pipe Line	26.66	5.35
Northern Pipe Line	[a] 3.54	4.37

[a] The Northern Pipe Line is a comparatively unimportant one.

The corresponding figures for other years show substantially similar conditions. The rates on which the actual charges for 1903, shown above, were based are substantially the same as those contained in the tariffs filed with the Interstate Commerce Commission in pretended compliance with the law.

From the very beginning of this conspiracy one of the principal means by which the Standard has been enabled to combine its companies and to suppress the business and trade of the independents has been by rebates, secret and discriminatory rates, and advantages in railway transportation. Especially in the early years this was the most powerful instrument for destroying competition. But notwithstanding the passage of the interstate commerce act and down until the investigation by the Bureau of Corporations, which immediately preceded the filing of this suit, the Standard Oil Company continued to evade the act and to obtain rates which were illegal. The testimony in this regard is carefully analyzed in volume 2 of this brief, pages 159 to 394. True, the court below did not find it necessary to pass upon this question, and this court may be of the same opinion, but it seems to the counsel for the Government to be too important to entirely omit upon this appeal. We have, therefore, with great care analyzed this testimony. It will be sufficient here to merely mention a few of the salient points established.

During the early period there is absolutely no question that enormous rebates were paid to the Standard Oil Company and its affiliated concerns. Although Mr. Rockefeller and Mr. Archbold made elaborate preparations and testified in great detail about this early history, neither denied that the

Standard Oil Company received said rebates. The fact is amply established by written documents signed by the Standard Oil Company and its officials, including John D. Rockefeller, William Rockefeller, John D. Archbold, Daniel O'Day, and others. Many of these documents are attached to the petition and are sufficiently commented upon in volume 2 of the brief.

It is very important to note that during the last ten years Standard officials and their associates have been directors in many of the leading railroad systems of the United States. For instance, the Standard interests have in the Chicago, Milwaukee and St. Paul Railroad four directors, in the Union Pacific, Southern Pacific, and Santa Fe railroads two each, in the New York, New Haven and Hartford Railroad, the New York Central Railroad and allied lines, the Missouri Pacific, the Boston and Maine, the Mexican Central and the Rutland railroads, one each. This representation on the directorates and the fact that the Standard had an enormous volume of business to furnish the railroads is an explanation of the shifting and illegal devices used by the railroads and the Standard Oil companies to give the Standard discriminatory rates. These discriminations have been brought about by direct rebates, by the use of combinations of secret intrastate rates on interstate shipments, and by discrimination in the open and published rates. By these means the Standard enjoyed rates for the transportation of oil from all the leading

Standard shipping points very much lower than the independent refiners have been able to procure from their shipping points, and in many cases the amount of the discrimination exceeded a reasonable profit upon the oil. It is impossible to believe that without connivance with the Standard Oil Company the railroads of this country should have uniformly made a system of rates whereby with scarcely an exception the independent shipping points were discriminated against in favor of the Standard shipping points. We can here point out only the principal instances of such discrimination.

The Standard's great refinery at Whiting, Ind., for many years supplied substantially all the territory west and south of Chicago, with the exception of the Pacific coast States since 1900 and the Rocky Mountain States. From Whiting the Standard enjoyed secret rates to Evansville, Ind., and Grand Junction, Tenn., on the basis of which enormous shipments were made into all of the territory south of the Ohio River, east of the Mississippi, and west of the Atlantic seaboard, except a strip of territory immediately along the coast. The independents competing with Whiting were located at Cleveland, Toledo, and western and northwestern Pennsylvania points, practically the same distance as Whiting from these southern destinations. To all this vast territory the Standard's rates were so much below the rates from these competing points that the independents were practically shut out altogether. A

few illustrations of such discrimination are as follows:

	Cents per 100 pounds.
To Chattanooga, Tenn.:	
Independents' rate from Pittsburg, 651 miles	47
Standard's rate from Whiting, 849 miles (by actual route used)	25.9
To Birmingham, Ala.:	
Independents' rate from Pittsburg, 794 miles	51.5
Standard's rate from Whiting, 820 miles (by actual route used)	29.5
To Harriman, Tenn.:	
Independents' rate from Pittsburg, 572 miles	46
Standard's rate from Whiting, 1,011 miles (by actual rotue used)	31.3

We name Pittsburg because the western and northwestern Pennsylvania independent shipping points take the same rate. The discrimination against Cleveland and Toledo was practically the same. The average discrimination against the independents into this entire territory is from 12 to 15 cents a hundred, amounting to nearly a cent a gallon, a large profit upon the oil.

These rates from Whiting were not only discriminatory, but they were secret and illegal departures from the legally published rates. For years the open published rate of the Chicago and Eastern Illinois Railroad and Evansville and Terre Haute Railroad from Whiting, Ind., through Illinois to Evansville, Ind., was 11 cents a hundred pounds; and bills were rendered to the Standard showing that rate, but were settled at unfiled rates of 8¼ or 6 cents a hundred pounds, according to the destination south of the Ohio River. These shipments were largely made on through consignments to points in other States south of Evansville. These facts as to presentation of the

bills at 11 cents per hundredweight and settlement at 8¼ and 6 cents are admitted by stipulation, and the other facts are undisputed, and no possible claim can be made that the rates paid by the Standard were legal.

The Grand Junction rate combination was equally illegal. It is fully described in volume 2 of the brief, pages 212 to 233. In substance the facts are these: The legal tariff rates from Whiting to southern points generally, via Evansville, Ind., consisted of a rate of 11 cents from Whiting to Evansville, plus various rates from Evansville to final destinations. From Evansville the oil was hauled over the Illinois Central Railroad to Grand Junction, Tenn., and thence over the Southern Railway to various points throughout the South. The proportion of the through rates from Evansville to the destinations accruing to the Southern Railway beyond Grand Junction were shown on a division sheet, which, according to the ordinary custom of railroads, was not filed with the Interstate Commerce Commission or made known to the public. Instead of shipping from Whiting to Evansville at the 11-cent rate and from Evansville, via Grand Junction, to the destinations at the through rates from Evansville, the Standard Oil Company shipped all the way from Whiting to Grand Junction, over this same route, on a rate of 13 cents per hundred pounds and then paid the Southern Railway from Grand Junction to destinations these unpublished proportions of the published rates from Evansville to destination. The

traffic officials of the Southern Railway testified that to apply these proportions beyond Grand Junction when the proper proportions between Evansville and Grand Junction had not been paid was illegal. Although the 13-cent rate from Whiting to Grand Junction was filed with the Interstate Commerce Commission, there is abundant evidence that it was not intended to come to the knowledge of shippers and was unknown to the Southern Railway; and besides no shipper other than the Standard could have known that this rate could be combined with these secret and unpublished divisions beyond Grand Junction.

To illustrate the effect of this secret combination, the legal tariff rate from Whiting to Birmingham, Ala., was 44 cents, made up of 11 cents from Whiting to Evansville and 33 cents from Evansville to Birmingham. Of the 33 cents between Evansville and Birmingham, the Illinois Central was entitled, by the division sheets, to 16½ cents between Evansville and Grand Junction and the Southern Railway to 16½ cents between Grand Junction and Birmingham. As a matter of fact, the Standard Oil Company shipped from Whiting to Grand Junction for 13 cents (or 3½ cents less than the Illinois Central's proportion for the much shorter haul from Evansville to Grand Junction) and then paid 16½ cents to the Southern Railway from Grand Junction to Birmingham, making a total of 29½ cents or 14½ cents less than the published rate combination.

Other enormous discriminations were on shipments from Whiting to East St. Louis, on which the Stand-

ard for years enjoyed a secret rate of 6 cents a hundred pounds as against the published rate of 18 cents a hundred pounds. The rates from the independent points in northern Ohio and Pennsylvania to East St. Louis were nearly double per ton per mile the rate from Whiting, although it is the usual custom of the railroads to make a lower rate per ton per mile for a longer than a shorter haul.

Another series of great discriminations were made on the Standard shipments from Olean, N. Y. These included a secret rate from Olean to Rochester and secret rates from Rochester to northern New York points generally. The secret rate from Olean to Rochester and another secret rate from Rochester to Norwood, N. Y., both of them covered by unfiled rate orders, marked on their face "Not to be posted," were used by the Standard on interstate shipments going to Vermont. These various rates from Olean and Rochester gave the Standard a cost of transportation from one-third to two-thirds less than independents could obtain from refineries in western Pennsylvania, which would ordinarily take the same rates as Olean. For these discriminations the Standard Oil Company of New York and the New York Central Railroad have been convicted and the Pennsylvania Railroad is under indictment. There were also a large number of secret rates from Burlington, Vt., to practically all stations in Vermont, and these were in most cases, by the terms of the tariff naming them, confined to the Standard alone, and were far below the published rates which other shippers had to pay.

In addition to these secret and illegal rates the Standard Oil Company in many other parts of the country enjoyed the benefit of rates in the published tariffs from its shipping points very much lower than the published rates from the shipping points of its competitors. These discriminations were so widespread, as shown in the numerous rate tables introduced by the Government, that the only possible conclusion is that the railroads deliberately connived with the Standard Oil Company to give it an unfair advantage.

Furthermore, for more than ten years prior to the institution of the investigation by the Bureau of Corporations and the starting of this suit, the independent refiners were practically shut out of New England by reason of the fact that the New England railroads refused to prorate (i. e., join with other railroads in making through rates less than the sum of the local rates of the several lines) on oil shipments coming from the west, although they were prorating on practically all other commodities. It further appears that the Standard Oil Company shipped its oil into New England by boat and distributed it at low rates from the seaboard towns, such as New London and East Boston, except that Vermont was largely supplied, as we have seen, from Olean, N. Y.

We pass over many other secret and open discriminations fully set forth in volume 2 of this brief. It appears that about the time the Bureau of Corporations investigated these various secret and

discriminatory rates and the Government instituted this case, the railroads withdrew nearly all of them. A table of the time of these changes is given in vol. 2 of the brief, pp. 379–381. They all occurred between June 23, 1905, and May 29, 1907. If these rates were not made for the benefit of the Standard Oil Company and largely discriminatory as against the competitors, it is remarkable that immediately on the discovery of them the railroads should have withdrawn them and substituted rates more equal.

RAILROAD DISCRIMINATION BY THE PAYMENT OF EXCESSIVE PRICES FOR LUBRICATING OIL.

The testimony also shows that the Standard Oil Company through a company in which it owns a majority of the stock—the Galena-Signal Oil Company—controls about 97½ per cent of the lubrication of railroads throughout the United States; and that it sells to most railroads at enormous profit. This is evidenced by the net earnings of the Galena-Signal Oil Company, which in 1906 were about 112 per cent on the capital stock actually paid in and about 105 on a liberal valuation of the capital actually used. It is also shown by the further fact that the prices to these railroads are substantially double the prices charged to a few favored lines, notably the Pennsylvania. For instance, the New York Central Railroad for ten years has paid about 100 per cent per gallon more than the Pennsylvania. While of course it appears that the Galena-Signal Oil Company gives the roads excellent service and furnishes good oil, nevertheless

the testimony is conclusive that other companies could also have furnished good oil and service; and we believe that it would be impossible for the Standard company to obtain this absolute monopoly except through its influence with railways. It further appears that it does not have any such absolute monopoly of the other lubricating business—for instance, the street railway systems of the country. (For full discussion of this evidence, see vol. 2 of brief, pp. 395 to 426.)

CONTRACTS WITH INDEPENDENT MANUFACTURERS.

It appears that wherever the Standard can do so it has made contracts whereby it has either marketed a part or all of the product of the independent refineries or has limited the output of the same. The testimony shows that for two or three years prior to the present suit, some 16 independent refineries in western Pennsylvania were compelled to sell the Standard Oil Company all of their export oil in consideration of the Standard pipe lines continuing to supply them with crude oil; that the Standard had contracts with the Puente Oil Company and the Union Oil Company, its two principal competitors in California, whereby it marketed all of the product of the Puente and limited it to 600,000 gallons of water-white oil per year and 360,000 gallons of naphtha per year, and whereby the Union Oil Company ceased to manufacture refined oil and other light products. It appears that it also has contracts for marketing most of the product of the Tidewater

Oil Company, and all of the product of the Florence Oil and Refining Company and the United Oil Company, of Colorado, and the Security Oil Company and Corsicana Refining Company, of Texas; and that it has contracts with many producers in California whereby they agree not to sell crude oil to any other concern. By reason of these contracts the Standard markets a larger proportion of the oil than it manufactures. (Brief, vol. 2, pp. 151 to 158.)

UNFAIR COMPETITION.

The testimony in this case shows that the various defendants have pursued a system of unfair competition against their competitors, whereby the independent companies selling and marketing petroleum have either been driven out of business or their business so restricted that the Standard Oil Company has practically controlled the prices and monopolized the commerce in the products of petroleum in the United States. This system has taken the form of price cutting in particular localities while keeping up high prices, or raising them still higher, in other localities where no competition exists; of paying rebates to customers as a part of said system of price cutting; of obtaining secret information as to competitive business largely through bribing railway employees, and using said secret information to procure the countermanding of orders of independents, and to facilitate the price-cutting policy; of the use of so-called bogus independent companies—that is, companies held out by the Standard Oil Company

as independent which are engaged in price cutting, while the Standard Oil Company maintains the prices through its well-known companies—and other abusive competitive methods against the independents. This testimony is fully summarized in volume 2 of this brief, pp. 427 to 641.

The Standard Oil Company is particularly able to carry on this predatory competition for the reason that it does not sell its product at central markets or through ordinary channels like most other large manufacturers. It markets its product to the retailer in every village and community in the United States and often directly to consumers. It does from 85 to 90 per cent of the business in the United States, leaving about 10 or 15 per cent to all its competitors. It is perfectly obvious, therefore, that if all the balance of the trade in the United States were in one concern it could not afford to have marketing stations and facilities in every part of the United States. In order to market in effective competition with the Standard Oil Company the independents must of course ship by tank cars, which is much cheaper than shipping by barrel, especially in less than carload lots, and they must also have stations for unloading where tanks are available, and tank wagons to meet the trade in competition with the Standard. It would be obviously impossible for such a concern to afford to spread its product over the whole United States. Even if all the balance of trade were in the hands of one concern it would have to confine itself to particular districts where it could

have adequate facilities equal to the Standard's, and therefore since the 10 or 15 per cent is in the hands of a large number of independents these independents must all the more confine themselves to small districts. This gives the Standard an opportunity to attack the particular district, as it does, and either to keep the independent concern down to a minimum of business or to destroy it entirely. It has undoubtedly been the policy of the Standard Oil Company to permit the independents to do a small percentage of the business, and this percentage has run from 10 to 15 per cent for many years. By thus keeping the independents within reasonable bounds it may control the prices, permit them to make a moderate profit and not allow their competition to get beyond control, and in most parts of the country make enormous profits itself. There is no question that if this court holds the Standard combination to be a legal organization and not guilty of monopoly—in other words, gives it carte blanche to pursue its own methods—it can eliminate every competitor within two years.

We desire here to describe briefly the various devices to which the Standard has resorted in the pursuit of its methods of unfair competition. The Standard Oil Company keeps a secret department in New York, known as the statistical department. Through this department it has a complete system of espionage upon its competitors all over the United States. It was with great difficulty that the Government succeeded in finally uncovering this system.

Many of the leading men connected with the Standard Oil Company were placed on the stand and denied knowing anything about the department until they were confronted with certain reports and statements which had come into the Government's hands. It appears by this testimony that the Standard Oil Company has a system of reports whereby every salesman and local agent procures information as to shipments of oil by independents into his district. These are procured by bribing railway employees to report competitors' shipments; by keeping men around railway stations to learn the shipping directions on barrels or cars; by following the tank wagons and salesmen of independents; by employing detectives to procure the information from the independents' employees, and by various other equally disreputable means. These reports are sent in immediately to the head office of the Standard's marketing division. From such reports the local salesmen and agents throughout the country are informed of the shipments made into their territory. This information is also reported to the head sales agents of the several Standard marketing companies at their New York headquarters and is preserved in the statistical department at 26 Broadway, to which we have referred. The greatest secrecy is maintained in regard to this entire system. For instance, railroad employees who furnish a large part of this information do not sign their names to the reports which they furnish or use stationery either of the Standard Oil Company or of the railroad company.

On the basis of this information regarding competitive shipments the Standard Oil Company at this central statistical department keeps complete records showing the percentage of the business done by independent concerns in each of its large territories and in each of its smaller subdivisions and in individual cities. The Government put in evidence from the records of the statistical department at New York such tables showing the percentage of independent business throughout the country, and also put in evidence numerous reports obtained from railroad employees and summarized reports of individual competitive shipments. This information is obviously of the greatest advantage to the Standard in determining where and how far it will cut prices in order to destroy competition. Moreover, it appears that the information of competitive shipments is often used in advance of the arrival of the shipments to secure the countermanding of orders and to facilitate other methods of unfair competition.

This same statistical department at New York keeps records showing the prices at which the Standard sells oil at each town throughout the United States, together with the margin of profit of the marketing company on such oil. Summaries of these records were introduced by the Government. They show in a most startling manner the practice of local price cutting and price discrimination, the widest possible differences appearing in the prices and profits per gallon at different towns even in the same general vicinity, to say nothing of still greater differences

between different parts of the country. These statistics corroborate the testimony of numerous witnesses for the Government regarding local price cutting.

The statistics show that in many places where there is a large percentage of independent business and sharp competition, the Standard Oil companies sell oil at a loss, and in most places where there is any considerable competition at low prices with a small margin of profit, whereas throughout the larger percentage of the territory where competition is substantially or entirely eliminated the Standard companies sell at very high prices with a large margin of profit. The tables contain the prices and the profit per gallon in all the leading main stations throughout the United States and many of the substations, and the averages for the several marketing districts. (See particularly the summarized tables covering this subject, Petitioner's Exhibits 628–635.)

These tables show, for example, that in 1899 in the Rocky Mountain territory the Standard Oil Company made an average profit on refined oil in the marketing business alone of 4.36 cents per gallon while the amount of competition was only two-tenths of 1 per cent; in the territory of the Standard Oil Company of Ohio on the other hand (practically the State of Ohio) the average marketing profit was only 0.94 of a cent per gallon while the competition was 14.2 per cent. In the Philadelphia territory, which includes the eastern part of Pennsylvania, in that year the Standard's marketing profit was 0.52 of a cent per gallon and the competition was 18.7 per cent.

Similar variations in profit as between the several marketing divisions appear for other years.

Again, to illustrate the extreme differences in the prices in individual cities, it appears that during 1904 in Los Angeles the price of oil was 7.5 cents per gallon, while there was a large amount of competition, 33.4 per cent. At the same time in Seattle, where there was no competition, the price was 15.5 cents, and in Portland, where there was also no competition, 15 cents. The Standard Oil Company lost 3.41 cents per gallon in Los Angeles, while it made a profit of 5.30 cents in Seattle and of 3.87 cents in Portland. Similar conditions exist in various other parts of the United States. Further illustrations of such price discrimination from the statistics are presented in volume 2 of the brief.

In that volume also is a review of all the other testimony on the subject of unfair competition. This testimony of necessity is very voluminous and complicated, because it covers a large number of small transactions at various points throughout the United States for a series of years. It, however, deserves the attention of the court, as it establishes beyond question the oppressive methods of the Standard Oil Company in order to monopolize this commerce and control the prices. The oral testimony of the witnesses is amply corroborated by letters of various Standard officials and employees, and other documents. They show substantially the following facts: That prior to the investigation by the Government and the institution of this suit the

defendants had a system of what are known as "bogus independent companies," operating in many parts of the country under a wide variety of names, some of them corporations, others mere names adopted to cover the business, in all cases owned by the Standard Oil Company but held out by it to be independent, and used for price cutting and other means of oppression. The Government uncovered 63 of these concerns. In nearly all these cases the defendants' witnesses admitted the existence of these companies and that their control was kept secret. These companies were predatory in their operations and were used to oppress the independents as they should establish a business in one place or another throughout the United States. It appears that when the Government started to investigate the Standard Oil Company and instituted this suit the Standard withdrew all these companies and liquidated them. These companies gave the Standard Oil combination a peculiar advantage. They enabled it to cut prices and injure the independents while keeping up its prices to its own regular trade. They were thus able to divert the trade from the independents, particularly that which the latter held by reason of prejudice against the Standard monopoly. This they were enabled to do more effectually because many of these companies had previously been actually independent and the Standard had secretly purchased them.

Through these companies and also through its openly controlled companies the Standard pursued

a system of cutting prices in places where the independents were doing business, in many cases below the cost and to a point which caused loss to competitors. The oral testimony of representatives of independent concerns on this subject of price cutting confirms the evidence from the tables of prices obtained from the records of the Standard and shows clearly the motives for the wide differences in prices at different places. A large amount of testimony was offered by the defendants to show that the independents usually cut prices first. This testimony is in many cases contradicted by the Government's witnesses and in other cases the apparent cuts by independent concerns were explained clearly. It is shown that while in many cases the Standard's well-known companies nominally maintained prices the secret companies were cutting prices, and also that the Standard companies often departed from their public prices by means of secret rebates, and prices openly made by independent concerns to meet these secret prices were what the defendants' witnesses called cut prices. In other cases where oil was selling at very high prices and there was no competition the independents would establish a price the same as the Standard had in other surrounding towns, whereupon the Standard would continue to lower prices until there was no profit in the business.

There were various other means used by the Standard. The independents frequently, and especially in the southern territory, are compelled to market their oil in barrels. Salesmen would go into

towns and, as no single merchant would buy a carload, a carload would be made up by aggregating the sales of a number of merchants. The Standard's agent would follow and break up the carload by getting some of the orders withdrawn. This was admitted by the vice-president and manager of the Standard Oil Company of Kentucky, and many letters of his were introduced showing this system of business. For this the Standard Oil Company of Kentucky and some of its salesmen were indicted in Tennessee, convicted, and the Standard Oil Company paid $3,000 fine. In addition, the Standard company was ousted from the State upon a suit of quo warranto by the attorney-general. The record in this case was introduced in evidence on the cross-examination of Collings, vice-president of the Standard Oil Company of Kentucky. It was not printed in the court below, and is not printed here. The case is now pending in this court on writ of error to the Supreme Court of Tennessee (No. 160, present term), and it is stipulated by counsel that this record may be referred to with the same force and effect as though printed herein.

The testimony shows that the Standard's salesmen were furnished with gauge rods, and went around the country gauging the barrels of their competitors and telling buyers that they were overgauged, that a higher gallonage was stated on the barrels than they really contained.

BRIEF OF THE LAW.

I.

THE TRUST AGREEMENTS OF 1879 AND 1882 WERE IN UNREASONABLE RESTRAINT OF TRADE, TENDED TO MONOPOLY, AND WERE VOID AT COMMON LAW.

(A) IT IS IMMATERIAL THAT THIS CONSPIRACY HAD ITS INCEPTION PRIOR TO THE ENACTMENT OF THE SHERMAN LAW, OR THAT MANY OF THE REBATES AND DISCRIMINATIONS GRANTED BY THE RAILROADS WHICH ENABLED THE DEFENDANTS TO MONOPOLIZE THE COMMERCE IN PETROLEUM ANTEDATED THE ENACTMENT OF THE INTERSTATE COMMERCE LAW; THE PRINCIPLES OF THE COMMON LAW APPLIED TO INTERSTATE AS WELL AS TO INTRASTATE COMMERCE.

Western Union Tel. Co. v. *Call Pub. Co.*, 181 U. S., 92.

Murray v. *C. & N. W. R. Co.*, 62 Fed., 24.

Interstate Com. Com. v. *B. & O. R. Co.*, 145 U. S., 263.

Bank of Kentucky v. *Adams Exp. Co.*, 93 U. S., 174.

In the case of the *Western Union Telegraph Company* v. *Call Publishing Company* this court held that the principles of the common law are operative upon all interstate commercial transactions except so far as modified by congressional enactment, and

that it was unlawful at common law for a telegraph company to unreasonably discriminate between its patrons. The court said:

> Can it be that the great multitude of interstate commercial transactions are freed from the burdens created by the common law as so defined and are subject to no rule except that to be found in the statutes of Congress? We are clearly of opinion that this can not be so, and that the principles of the common law are operative upon all interstate commercial transactions except so far as they are modified by congressional enactment.

In this case the court cited and approved the opinion of Judge Shiras, of the Northern District of Iowa (62 Fed., 224), which is an exceedingly able review of the subject of the application of the common law to interstate transactions.

These authorities settle the question that the discriminations, rebates, and preferences granted by the railroad companies by which the defendants in the early days were aided in building up a monopoly were unlawful at common law. The authorities are equally conclusive that unreasonable restraints and monopolies of interstate commerce were unlawful at common law.

The power of Congress to modify the rules of the common law so far as carriers are concerned is granted by the same provision of the Constitution which empowers Congress to change the common law in relation to restraints and monopolies and

to authorize affirmative actions to enjoin and prevent the continuance of such restraints and monopolies; both come under the commerce clause of the Constitution. At common law a railroad could not be prosecuted criminally for discriminating or paying rebates which might constitute a discrimination, but contracts for such discriminations were void. At common law the Government could not prosecute criminally unreasonable restraints of trade and monopolies, but the court would not enforce contracts therefor.

It is clear, therefore, that the common law was, prior to the enactment of the Sherman Act and the interstate commerce act, applicable to the great body of interstate commerce.

(B) THE TRUST AGREEMENTS OF 1879 AND 1882 WERE IN UNREASONABLE RESTRAINT OF TRADE, TENDED TO MONOPOLY, AND WERE VOID AT COMMON LAW.

State v. *Standard Oil Co.*, 49 Ohio St., 137.

Pocahontas Coke Co. v. *Powhatan Coal & Coke Co.*, 60 W. Va., 508; 50 S. E. Rep., 264.

Charleston Nat. Gas Co. v. *Kanawha Nat. Gas Light & Fuel Co.*, 58 W. Va., 22; 50 S. E. Rep., 877.

Slaughter v. *Thacker Coal Co.*, 55 W. Va., 642.

Finck v. *Schneider Granite Co.*, 86 S. W. Rep., 213.

Shawnee Compress Co. v. *Anderson*, 209 U. S., 423.

Bigelow v. *Calumet & Hecla Min. Co.*, 155 Fed., 869.

Continental Wall Paper Co. v. *Louis Voight & Sons Co.*, 148 Fed., 939.

United States v. *Addyston Pipe & Steel Co.*, 85 Fed., 279.

Dunbar v. *Am. Telegraph & Telephone Co.*, 79 N. E. (Ill.), 423.

Texas Standard Cotton Oil Co. v. *Adoue*, 83 Texas, 650; 19 S. W., 274.

Pacific Factor Co. v. *Adler*, 90 Cal., 110; 27 Pac., 36.

Nester v. *Continental Brewing Co.*, 161 Pa. St., 473; 29 Atl., 102.

Morris Run Coal Co. v. *Barclay Coal Co.*, 68 Pa. St., 173.

Butchers' Union Co. v. *Crescent City Co.*, 111 U. S., 746.

Stanton v. *Allen* (1848), 5 Denio, 434.

Watson v. *H. & N. Y. Nav. Co.* (1887), 52 How. Pr., 348.

Anderson v. *Jett* (1889), 80 Ky., 375; 12 S. W., 670.

Leslie v. *Lorillard* (1886), 40 Hun., 392.

India Bagging Co. v. *Kock* (1848), 14 La. Ann., 168.

Craft et al. v. *McConoughy* (1875), 79 Ill., 346.

Cumming v. *Union Bluestone Co.* (1897), 44 N. Y. Supp., 787.

People v. *Sheldon*, 66 Hun., 590.

People v. *Sheldon* (1893), 139 N. Y., 251.

People v. *Milk Exchange* (1895), 145 N. Y., 267.

Emery v. *Ohio Candle Co.*, 47 Ohio St., 320.

Judd v. *Harrington* (1893), 139 N. Y., 105.

Leonard v. *Poole*, 114 N. Y., 371.

Central Ohio Salt Co. v. *Guthrie*, 35 Ohio St., 666.

D. & E. Chaplin v. *Brown Bros. et al.*, 83 Iowa, 156; 48 N. W., 1074.

Pittsburg Carbon Co. v. *McMillin*, 119 N. Y., 46.

Santa Clara Valley Mill and Lbr. Co. v. *Hayes*, 76 Cal., 387.

De Witt Wire Cloth Co. v. *N. J. Wire Cloth Co.*, 14 N. Y. Supp., 277.

Hoffman v. *Brooks*, 23 Am. Law Reg., 648.

State v. *Armour Packing Co.*, 73 S. W., 652.

State v. *Swartzschild*, 73 S. W., 1132.

Clark v. *Needham*, 83 N. W., 1027.

State v. *Portland Nat. Gas Co.*, 53 N. E., 1089.

City of Chicago v. *Rumpff*, 45 Ill., 90.

Arnot v. *Coal Co.*, 68 N. Y., 558.

The decisions of the various courts, which we shall proceed to cite and comment upon, establish the invalidity of the Standard Oil Trust at common law. This trust was the first one to be organized. It was conceived by Mr. Rockefeller, his associates and counsel in order to avoid the illegality of combining all of these concerns in the Standard Oil Company of Ohio.

It was followed, as is always the case in attempts to evade the law, by other combinations of a like form, notably the Sugar Trust, the Whisky Trust, and the Paint and Lead Trust, each of which was respectively declared void by the courts of New York, Nebraska, Ohio, Illinois, and Missouri. These decisions have

been cited and approved by many of the state courts of the country, by the United States Circuit Courts, and by the Supreme Court of the United States. The doctrines they lay down have become the settled law of the land.

The Standard Oil Trust, as we have seen, was first organized in a public form in 1882, and between that and the passage of the Sherman Act in 1890 it was followed by these other trusts, which threatened to absorb all the industries of the country. There was during these years widespread alarm because of the encroachments of these large combinations upon private industry and capital. Various investigations took place, commencing with the Hepburn committee of the New York legislature in 1879, and including among others the Committee on Manufactures of the Fiftieth Congress in 1888, and the New York senate committee in 1888. These investigations, in each of which the Standard Oil combination was one of those principally taken up, showed the monopolistic character of such combinations, and they were followed by suits in the various States.

In 1890 the attorney-general of Ohio filed a bill in the nature of quo warranto against the Standard Oil Company of Ohio, claiming that the company had abused its corporate franchise in becoming a party to the trust agreement of 1882, which agreement evidenced an intent to monopolize and control the commerce in oil, and was in restraint of trade and void. The case came before the Supreme Court of Ohio upon demurrer to the answer of the corporation and the

petition of the attorney-general, and the court held that while the corporation itself had not signed the agreement, it had effectually become a party thereto through the signature of all of its stockholders, its officers, and directors; *that the agreement was void as in restraint of trade and as an attempt to monopolize the trade and commerce in oil.* The importance of this case, lying at the very threshold of the question we are considering, leads us to quote at length from the decision. Judge Minshall said:

> That the nature of the agreement is such as to preclude the defendant from becoming a party to it is, we think, too clear to require much consideration by us. * * * By this agreement, indirectly it is true, but none the less effectually, the defendant is controlled and managed by the Standard Oil Trust, an association with its principal place of business in New York City, and organized for a purpose contrary to the policy of our laws. Its object was to establish a virtual monopoly of the business of producing petroleum and of manufacturing, refining, and dealing in it and all its products, throughout the entire country, and by which it might not merely control the production but the price at its pleasure. All such associations are contrary to the policy of our State and void. (*Salt Co.* v. *Guthrie*, 35 Ohio St., 666; *Emery* v. *Ohio Candle Co.*, 47 id., 320.) "The word 'trust,'" says Mr. Cook, "was first used to mean an agreement between many stockholders in many corporations to place all their stock in the hands of trustees and to receive

therefor trust certificates from the trustees. The stockholders thereby consolidated their interests and became trust-certificate holders. The trustees own the stock, vote it, elect the officers of the various corporations, control the business, receive all the dividends on the stock, and use all these dividends to pay dividends on the trust certificates. The trustees are periodically elected by the trust-certificate holders. The purpose of the 'trust' is to control prices, prevent competition, and cheapen the cost of production. The Standard Oil Trust, the American Cotton Seed Oil Trust, and the Sugar Trust are examples of this method of combination." (Cook on Stock and Stockholders, sec. 503a; see also Wait on Insolvent Corporations, sec. 478.)

Much has been said in favor of the objects of the Standard Oil Trust, and what it has accomplished. It may be true that it has improved the quality and cheapened the cost of petroleum and its products to the consumer. But such is not one of the usual or general results of a monopoly; and it is the policy of the law to regard not what may but what usually happens. Experience shows that it is not wise to trust human cupidity where it has the opportunity to aggrandize itself at the expense of others. The claim of having cheapened the price to the consumer is the usual pretext on which monopolies of this kind are defended, and is well answered in *Richardson* v. *Buhl* (77 Mich., 632). After commenting on the tendency of the combination known as

the Diamond Match Company to prevent fair competition and to control prices, Champlin, J., said: "It is no answer to say that this monopoly has in fact reduced the price of friction matches. That policy may have been necessary to crush competition. The fact exists that it rests in the discretion of this company at any time to raise the price to an exorbitant degree."

Monopolies have always been regarded as contrary to the spirit and policy of the common law. The objections are stated in The Cases on Monopolies (*Darcy* v. *Allein*, Coke's Reports, Part XI, 84b). They are these: "1. That the price of the same commodity will be raised, for he who has the sole selling of any commodity may well make the price as he pleases. 2. The incident to a monoply is, that after the monopoly is granted, the commodity is not so good and merchantable as it was before; for the patentee, having the sole trade, regards only his private benefit, and not the commonwealth. 3. It tends to the impoverishment of divers artificers and others, who before, by the labor of their hands in their art or trade, had maintained themselves and their families, who will now of necessity be constrained to live in idleness and beggary." The third objection, though frequently overlooked, is none the less important. A society in which a few men are the employers and the great body are merely employees or servants is not the most desirable in a republic; and it should be as much

> the policy of the laws to multiply the numbers engaged in independent pursuits or in the profits of production as to cheapen the price to the consumer. Such policy would tend to an equality of fortunes among its citizens, thought to be so desirable in a republic, and lessen the amount of pauperism and crime. It is true that in the case just cited the monopoly had been created by letters patent. But the objections lie not to the manner in which the monopoly is created. The effect on industrial liberty and the price of commodities will be the same whether created by patent or by an extensive combination among those engaged in similar industries, controlled by one management. By the invariable laws of human nature, competition will be excluded and prices controlled in the interest of those connected with the combination or trust.

We have quoted at length from this decision because of its importance, the court having considered the identical contract involved in the case at bar. It may be said that the contract was simply held void under the law of Ohio. We do not so understand the decision. No statute of Ohio is invoked prohibiting restraints in domestic commerce[a] or monopolization thereof. The court placed the decision upon the broad grounds of public policy; and public policy as much inhibits the monopolization of interstate commerce as it does the monopolization

[a] The Valentine antitrust act was not passed until 1898; 56 N. E., 467.

of intrastate commerce. (See also *Waters-Pierce Oil Co.* v. *Texas*, 212 U. S., 86.) But, however this may be, if the contract was void in restraint of intrastate commerce, it was equally void in restraint of interstate commerce if the various corporations were engaged at the time in such commerce. But, whether void under the state law, under the common law, or under the act of Congress, the trust agreement, being void, can not become the basis of a legal ownership to justify the corporate combination of 1899.

But counsel claim that there was no averment or allegation in the petition in the Ohio case that the trust agreement was a combination in restraint of trade or tended to monopoly, and that the State in no way raised such an issue. The petition set out the trust agreement, and averred that the Standard Oil Company was a party to it; the question whether it showed on its face an agreement in restraint of trade or one tending to monopoly was therefore raised. The court actually decided that question, and the question whether the pleadings in the state court were sufficient to raise the question is therefore now entirely immaterial.

Subsequently the attorney-general of the State of Ohio brought suits of quo warranto in the Supreme Court of Ohio against the Buckeye Pipe-Line Company, the Solar Refining Company, the Ohio Oil Company, and the Standard Oil Company, claiming they had violated the laws of Ohio upon two grounds: First, that they had executed the trust agreements, which were set out in full in the Standard Oil case

which we have just considered; second, that the separate corporations had entered into a combination with 19 others named for the purpose of preventing competition in the production, transportation, and refining of petroleum and of fixing and maintaining the prices at which its various products should be sold. It was alleged that the same persons were elected directors of each of the different corporations and that it "entered into a combination with nineteen others named," etc. This second allegation of the bill seems to have been also based upon the trust agreement which by the pleading was made a part of the second cause of action. It was claimed by the defense that the trust statute of Ohio was invalid. Speaking of this contract the court said (56 N. E., 467):

> The agreement, according to the allegations of the petition, has no purpose whatever except to prevent competition in the production, transportation, and refining of petroleum, to the end that there may be received from the consumers of its products higher prices than would prevail under the condition of open competition. Counsel for the defendants admit that such a contract is within the inhibitions of the act, but deny the power of the legislature to inhibit it. * * * The definite proposition of counsel upon this point is that, although the act is an exercise of legislative power, it transcends the provisions of the state and federal constitutions which render inviolable the rights of liberty and property,

> which include the right to make contracts. It would be difficult to place too high an estimate upon these guaranties, and they include the right to make contracts. But it is settled that these guaranties are themselves limited by the public welfare or the exercise of the police power. Although that power may not be conclusively defined, its nature and attributes have been the subject of much investigation. In all considerate discussions of the subject it is conceded that in the exercise of this power the legislature can prohibit only those uses of property which are hurtful to the public, and the inhibited use must be hurtful in a legal sense. That contracts like these are hurtful in that sense has been held in more cases than it would be practicable to cite. They abound throughout nearly three centuries of the development and administration of the common law in England and America.

This case is important more because of the fact that the court had under consideration this Standard Oil Trust agreement than for any new principle enunciated.

Following this conspicuous example of combination through a trust agreement, other like agreements were made by which the authors undertook to control the various corporations, firms, and limited partnerships engaged in competition with each other in various branches of industry, notably the Sugar Trust, the Whisky Trust, the Glucose Trust, and the National Lead Trust. We shall consider these cases, because it will be seen that they are not only impor-

tant in that they follow the Ohio case and hold trust agreements like the one in question void as in restraint of trade and an attempt to monopolize trade and commerce, but some of these cases are extremely important upon the legality of a holding corporation. In several of the cases, notably the whisky, glucose, and lead trust cases, after the decision holding the Standard Oil Trust invalid, the trustees or parties in control of the trust organized corporations to hold the stocks of the various companies in the trust, transferred the stocks to a central holding company, and the court held that the holding company was invalid upon the same ground that the trust was invalid.

In the case of *People* v. *North River Sugar Refining Co.* (54 Hun., 354; s. c. 3 N. Y. Supp., 401) quo warranto proceedings were brought in the Supreme Court of New York to oust the North River Sugar Refining Company from the right to exercise its franchises in the State of New York, on the ground that it had abused its corporate powers in becoming a party to a trust agreement in all material respects like the Standard Oil Trust agreement. The case is important as holding (second ground) that the agreement tended to create a monopoly and was therefore void as in restraint of trade. We invite attention to the very able opinion by Judge Barrett, who reviewed many of the leading cases upon this subject and summed up his conclusions as follows:

> The principles established by these cases seem to cover and fully meet the main position

taken in support of the present agreement. There are, however, one or two minor considerations which should be noticed. The first is that this agreement seems to avoid the pitfall of many of the cases by carefully omitting any specific authority to fix prices. Such authority, however, is plainly covered by the enormous general power conferred upon the trust board. The greater includes the less, and any specification on this head would have been superfluous. Even Mr. Carter finally yielded this point. "I agree," he says, "in the broadest manner, that the power exists there to fix a price; eventually it is for the interests of the parties to fix the price." The truth is that, under this agreement, the trust board can direct the business movements of these 17 or 18 corporations as absolutely as the general of a great army can direct the movements of its various *corps d'armee.* But a director may rebel, say the learned counsel. Well, even in war there is a possibility that a corps commander may disobey the orders of his chief, but discipline and change of military agency speedily follow. There is still less likelihood of mutiny in boards of directors who practically take office under the trust board (and subject to the provisions of the trust deed), who are appointed by the trust chiefs, and removed by a mere retransfer of stock "upon request" at any time, and, above all, who are spurred to active and zealous obedience by the hope, nay, by the substantial certainty, of gain; for there is

nothing whatever to prevent the trustees from filling these corporate boards with their own members or with other holders of their own trust certificates. The trust board is, indeed, clothed with power far in excess of the ordinary stockholders of a corporation. It is, in substance, both stockholders and directors, and this union of force embraces every share of stock and every director in every corporation. What need, then, for specific detail in the general delegation of power? The board, under this executed deed, can close every refinery at will, close some and open others, limit the purchase of raw material (thus jeopardizing and in a considerable degree controlling its production), artificially limit the production of refined sugar, enhance the price to enrich themselves and their associates at the public expense, and depress the price when necessary to crush out and impoverish a foolhardy rival; in brief, can come as near to creating an absolute monopoly as is possible under the social, political, and economic conditions of to-day. We are told that this can not be accomplished with regard to an article like sugar, which can be indefinitely produced by the application of capital and labor, and that monopoly is possible only where the supply of the article is restricted by nature. This position has been maintained in an argument of exceeding brilliancy, which I confess to have enjoyed as one always enjoys a persuasive manner of presentation. But while the argument was most ingenious it was neither sound, nor—I say it with re-

spect—plausible. Of course, a monopoly, in the strict, technical, and absolute sense, can not be thus created, but a monopoly in a legal sense can. The monopoly with which the law deals is not limited to the strict equivalent of royal grants or people's patents. Any combination the tendency of which is to prevent competition in its broad and general sense, and to control and thus at will enhance prices to the detriment of the public, is a legal monopoly; and this rule is applicable to every monopoly, whether the supply be restricted by nature or susceptible of indefinite production. The difficulty of effecting the unlawful purpose may be greater in the one case than in the other, but it is never impossible. Nor need it be permanent or complete. It is enough that it may be even temporarily and partially successful. The question in the end is, Does it inevitably tend to public injury?

Why, then, does not this trust board combine all of these unlawful purposes with ample power of accomplishment? Theoretically, it can not prevent other capitalists from coming forward and utilizing their means in combination with labor, but practically it can. The struggle would be an unequal, and, except under powerful, unusual, and extraordinary conditions, impossible. A vast harvest could be reaped at the expense of the public before the foundation of the competitive edifice could be thoroughly laid. Nor could the power of the combination be defeated by outside forces. The undue enhancing of prices might draw to the locality the attention of the foreign com-

mercial world. But the argument here overlooks the laws of the United States and the duties imposed by those laws upon imports. It overlooks, too, the expense of transportation and handling and the delays incident thereto. The harvest could again be reaped at the public expense before the advent of competition, and that harvest could then be utilized by the sudden lowering of prices, to the repression of the foreign competitor. Such, at least, is the tendency of the combination, and such its practical power. The defendant's whole argument on this head is based upon theory rather than fact, just as its earlier argument, with regard to the corporations, is based upon legal form rather than substance. The doctrines of political economy which have been pressed upon us are based upon normal conditions, and have no bearing whatever upon combinations organized for the express purpose of surmounting and subverting those conditions.

Lastly, this appeal to the law is criticised as an interference with a natural state of things. The unnatural thing is said to be the law when it attempts to check the natural order. Unfortunately for this argument it is the combination which has resorted to what it calls the unnatural thing. It was not content with natural partnerships or associations of individuals, but resorted to the device of corporate artificiality to effect its ends. Having asked and accepted the favor of the law, it can not complain that it is taken to task for grossly offending its letter and spirit. Fortunately, the law

> is able to protect itself against abuses of the privileges which it grants; and while further legislation, both preventive and disciplinary, may be suitable to check and punish exceptional wrongs, yet there is existing, to use the phrase of a distinguished English judge in a noted case, "plain law and plain sense" enough to deal with corporate abuses like the present—abuses which, if allowed to thrive and become general, must inevitably lead to the oppression of the people, and ultimately to the subversion of their political rights. Again, the legal results justly follow forfeiture and dissolution. Let me say, in conclusion, that it would quite unnecessarily belittle the discussion of this momentous question to consider the minor charges presented by the people. The judgment should rest upon the broad and main issue. There it rests with a sense of fitting proportion, and there it should be left. For these reasons the defendant's motion must be denied, and the plaintiff's granted.

In the trust agreement commonly known as the Whisky Trust, which was considered in the case of *State* v. *Nebraska Distilling Co.* (29 Nebr., 700), and in the case of *Distilling & Cattle Feeding Co.* v. *People* (156 Ill., 449), the agreement in all substantial parts, so far as the questions involved in this case are concerned, was the same, and evidently prepared after the plan of the Standard Oil Trust agreement. It was made in 1887, some five years after the Standard Oil agreement was made and the trust organized. The validity of this trust agreement was first ques-

tioned in the case of *State* v. *Nebraska Distilling Co.* (29 Nebr., 700; 46 N. W. 155). It appeared by the trust agreement in the findings in that case that the Nebraska Distilling Company was a corporation organized under the laws of Nebraska, for the purpose of manufacturing and selling alcoholic spirits; that in 1887 the Distilling and Cattle Feeding Company trust agreement was made, under which the stockholders of various corporations transferred their stocks to certain trustees, named therein, and under which the trustees were to issue trust certificates to the stockholders of the various subsidiary corporations, elect boards of directors, and control through stock ownership the various corporations and associations. It also appeared by the findings of the court as follows:

> Sixth. That prior to the formation of said trust, various distillers had formed what is called "pools," the object of which was to prevent an overproduction of alcohol, spirits, and liquors. In the absence of such a combination there was a tendency to overproduction, and to furnish a supply beyond the demands, the consequence of which was to lower the price of the production and make the business unprofitable. Owing to an inherent infirmity in the pooling system it failed to accomplish its full purpose, and, as a substitute therefor, said trust was formed. The trustees of the trust have almost unlimited power and control over all distilleries that enter it. They can limit their production, or suspend their operation altogether. From 90 to 110 distilleries are

located north and west of the Ohio River, of which number about 75 or 80 have entered the trust, and of the number under the control of the trust about 14 are kept running. The trustees confine the production of the distilleries under their control to the large houses situated in favorable localities, which can be run at less expense than small houses located in unfavorable places. Of the distillery plants in actual operation, about 6 are located in Peoria, the headquarters of the trust. That the corporate stock assigned and transferred to said trustees is owned and held by them in common, and they acquire thereby the rights and powers of shareholders, and exercise full control and direction of the action, management, and business of the companies whose stock has been so assigned and transferred to them as aforesaid; and they are enabled thereby to regulate, and do to a great extent regulate, at will, the production and price of alcohol, spirits, and other liquors, in the State of Nebraska and in the United States. The said trustees can and do at will restrict and limit the production and supply of alcohol, spirits, and other liquors, and thereby enhance their value.

It is unnecessary to state all the details of the elaborate findings of the court. It is sufficient to say that the stockholders of the Nebraska Distilling Company transferred their stock to the trustees, who thereafter controlled and managed the corporation as they saw fit. The decision of the court, rendered in 1890, is an able exposition of the law of monopolies and contracts which destroy competition and restrain

trade. It is worthy of note that the court cited and approved the case of *Richardson* v. *Buhl* (known as the Diamond Match case), which we cite, and various other cases on the question of monopoly and contracts in restraint of trade. In summing up the discussion, the court said (29 Neb., 719):

> The findings in this case, to which no objection is made, clearly show that the object of the distilling company in entering into the illegal combination was to destroy competition and create a monopoly, not only by limiting the production of alcohol, but by dismantling as many distilleries as the trust saw fit, absolutely prevent the manufacture of the article, except in the few establishments controlled by the trust; and thus it would be enabled to control prices, prevent production, and create a monopoly of the most offensive character. Any contract entered into with such an object in view is, under the laws of this State, null and void, and the conveyance from the distilling company to the trust was in contravention of the authority conferred by the statutes on that company, in excess of the powers granted by its charter, and against public policy and void, and no title passed by such conveyance.

The decision in this Nebraska case was filed in May, 1890. Evidently the parties anticipated this unfavorable decision. These trust agreements had been attacked in several places in the country; the Sugar trust had been declared invalid in New York and litigation had been instituted by the attorney-

general of Ohio against the Standard Oil trust. This litigation had been going on in Nebraska, involving a like agreement, in the Cattle Feeding case, so that in February, 1890, the trust certificate holders of the Cattle Feeding Company met to consider the advisability of changing the form of the organization into a corporation. (*Distilling & Cattle Feeding Co.* v. *People*, 156 Ill., 458 of opinion.) It is sufficient to say that a corporation was organized, under the laws of Illinois, called the Distilling and Cattle Feeding Company, with a capital stock of $35,000,000, which acquired the properties formerly controlled by the trust. The attorney-general of the State of Illinois brought quo warranto proceedings against the corporation to oust it from the right to exercise its franchises in Illinois because the corporation was an unlawful combination in restraint of trade and a monopoly. The bill alleged, in substance, the execution of the trust agreement and the organization of the trust. The agreement is set out in full in the statement of facts. The bill further alleged that the trustees acquired the stock of various corporations, controlling about 81 different distilleries throughout the various States, a large number being in Illinois; that in February, 1890, a special meeting of the certificate holders was held to consider the advisability of organizing a corporation to succeed the trust, and a preamble and resolution was adopted which in substance called for the formation of a corporation known as the Distilling and Cattle Feeding

Company, with a capital stock of $35,000,000, and the transfer to the Distilling and Cattle Feeding Company of all of the property of the subsidiary corporations the stock of which the trustees held, and that the stock of the Distilling and Cattle Feeding Company should be exchanged, share for share, for the outstanding trust certificates, which represented the property of the subsidiary corporations. The bill alleged that the persons who were the trustees also constituted the majority of the directors of the new corporation, and at the same time they were directors in the subsidiary corporations whose stock they held; also that they caused the property of all the subsidiary corporations to be conveyed to the Distilling and Cattle Feeding Company, simply leaving the shells of the subsidiary corporations, the stocks of which were in their hands. In this respect the Distilling and Cattle Feeding Company was stronger than the Standard Oil Company. It actually did purchase the properties of the various distilleries which were owned by the subsidiary corporations in the trust, while the Standard Oil Company stepped into the shoes of the trustees and holds the stocks of these separate, distinct subsidiary corporations and controls them in the same manner as the trustees held and controlled them. The bill alleged that the corporation acquired, by purchase and otherwise, the distillery property of two certain distillery companies in Illinois, and exacted from them a contract that they would not within five years thereafter engage in the business of distilling

in any place in the United States within 1,000 miles of Chicago; that the corporation had been so managed that it had come into control of a substantial monopoly of the manufacture of spirits, and that it controlled 95 per cent of the production of the United States. There were other allegations tending to show the intent to monopolize, to wit, that the company had acquired various plants engaged in the business of distilling and had dismantled them; that it sold its products under a system of rebate voucher, by which, if the purchaser should buy all of his supply of spirits from the company for a period of six months, he should, at the end of that period, be entitled to a rebate, this system forcing a purchaser to continue to give his exclusive patronage to the corporation, etc.

To this bill pleas were filed. It will be unnecessary in this brief to detail the particulars of these pleas. The first plea admits the making of the trust agreement, and that within one year from the date of said agreement it embraced about 81 different distillery companies, persons, and firms, and that many of them were Illinois corporations; that those corporations had become parties to the agreement prior to February 11, 1889, and had all conveyed their real estate to the same persons, to be held in trust for the stockholders of their respective corporations, and that the stock of the corporation had been sold to trustees with the exception of enough to qualify boards of directors. The organization of the Distilling and Cattle Feeding Company

was admitted. All manner of combination, conspiracy, and monopoly, dismantling of plants and unfair means in the sale of the product were denied by the pleas. It was alleged that the corporation had purchased the property of all these corporations for a valuable consideration; that it did not monopolize trade and commerce in alcohol, spirits, and high wines, and did not produce over 65 per cent of the product.

There was a demurrer to the plea, and the pleas were held insufficient for lack of particularity and other technical grounds; but it was held by the court that the sufficiency of the bill might also be considered in the case. The substantial facts appeared to the court. The court held the trust agreement void, as in restraint of and an attempt to monopolize trade and commerce, and that the corporation which succeeded to the property of all these subsidiary corporations in the trust was also void, and judgment was ordered for the State. The court said (p 486):

> There can be no doubt, we think, that the Distillers and Cattle Feeders' Trust, which preceded the incorporation of the defendant, was an organization which contravened well-established principles of public policy, and that it was therefore illegal. No one who intelligently considers the scheme of this trust, as detailed in the information, can for a moment doubt that it was designed to be and was in fact a combination in restraint of trade, and that it was organized for the purpose of

getting control of the manufacture and sale of all distillery products, so as to stifle competition, and to be able to dictate the amount to be manufactured, and the prices at which the same should be sold, and thus to create, or tend to create, a virtual monopoly in the manufacture and sale of products of that character. No other business principle can be suggested upon which the development of such an elaborate and far-reaching scheme can be accounted for. No rational purpose for such organization can be shown consistent with an intention to allow business to run in its normal channels, to give competition to its legitimate operation, and to allow both production and prices to be controlled by the natural influence of supply and demand, and the results, as shown by the information, were such as might be anticipated. The trust obtained possession of nearly all the distilleries and of nearly the entire distillery product of the United States, thus enabling it to dictate prices and the amount of production, and to thus draw to itself the substantial control of the distillery business of the country.

The court reviewed the case from Nebraska, which held the very trust agreement under consideration void, the case of *State* v. *Standard Oil Company* (49 Ohio St., 137), *People* v. *North River Sugar Ref. Co.* (54 Hun., 354, 121 N. Y., 578), *Richardson* v. *Buhl* (77 Mich., 632), and *People* v. *Chicago Gas Trust* (130 Ill., 268), all of which cases sustain the position we take.

Upon the question of the validity of the corporation, the court held that there was no magic in a corporation, and that the scheme was evidently an attempt to perpetuate the power of the trustees—merely a substitution of the corporation for the trustees. The court said (pp. 490–492):

> But the defendant contends that, while this may all be so, the change in organization from an unincorporated association to a corporation, and the change in the mode of holding the distillery properties of the various corporations formerly belonging to the trust by surrendering the stock of the corporations, by means of which the control of those properties was formerly maintained, and having the properties themselves transferred and conveyed directly to the defendant corporation, have purged the combination of its illegality. It must be admitted that these changes, so far as they have any effect upon the rights or interests of the former stockholders in those corporations or of the public, are formal rather than substantial. The same interests are controlled in substantially the same way and by the same agencies as before. The nine trustees of the trust, who, as the holders of all capital stock of the corporations and as a majority of the directors of each, controlled such corporate property, became the subscribers for all the stock of the new corporation and its board of directors. The conveyance and transfer of the properties of the constituent companies to the new corporation was merely a transfer by the trustees to themselves, though in a

slightly different capacity, and the former stockholders in the constituent companies simply exchanged their trust certificates, share for share, for stock in the new corporation. That corporation thus succeeds to the trust, and its operations are to be carried on in the same way, for the same purposes, and by the same agencies as before. The trust, then, being repugnant to public policy and illegal, it is impossible to see why the same is not true of the corporation which succeeds to it and takes its place. The control exercised over the distillery business of the country—over production and prices—and the virtual monopoly formerly held by the trust are in no degree changed or relaxed, but the methods and purposes of the trust are perpetuated and carried out with the same persistence and vigor as before the organization of the corporation. There is no magic in a corporate organization which can purge the trust scheme of its illegality, and it remains as essentially opposed to the principles of sound public policy as when the trust was in existence. It was illegal before and is illegal still, and for the same reasons.

But it is urged that the defendant, by its charter, is authorized to purchase and own distillery property, and that there is no limit placed upon the amount of property which it may thus acquire. By its certificate of organization it is authorized to engage in a general distillery business in Illinois and elsewhere, and to own the property necessary for that purpose. It should be remembered that grants

of powers in corporate charters are to be construed strictly, and that what is not clearly given is, by implication, denied. The defendant is authorized to own such property as is necessary for carrying on its distillery business, and no more. Its power to acquire and hold property is limited to that purpose, and it has no power, by its charter, to enter upon a scheme of getting into its hands and under its control all, or substantially all, the distillery plants and the distillery business of the country for the purpose of controlling production and prices, of crushing out competition, and of establishing a virtual monopoly in that business. Such purposes are foreign to the powers granted by the charter. Acquisitions of property to such extent and for such purpose do not come within the authority to own the property necessary for the purpose of carrying on a general distillery business. In acquiring distillery properties in the manner and for the purposes shown by the information, the defendant has not only misused and abused the powers granted by its charter, but has usurped and exercised powers not conferred by, but which are wholly foreign to, that instrument. It has thus rendered itself liable to prosecution by the State by *quo warranto*, and we are of the opinion that, upon the facts shown by the information, the judgment of ouster is clearly warranted.

There are other Illinois cases which have a strong bearing upon the case at bar, because, while they did not involve a trust agreement like the one in ques-

tion, there was an attempt to monopolize commerce through corporate combination. The leading cases on this point are *Harding* v. *American Glucose Co.* (55 N. E. Rep., 577), and *People* v. *Chicago Gas Trust* (130 Ill., 268).

People v. *Chicago Gas Trust* (130 Ill., 268).[a]—This case involved the legality of the Chicago Gas Trust Company, a corporation formed under the general incorporation law of Illinois, the stated object of which was to operate gas plants in the city of Chicago and elsewhere in the State of Illinois—

> and to purchase and hold or sell the capital stock, or purchase or lease or operate the property, plant, good will, rights, and franchises of any gas works, or gas company or companies, or any electric company or electric companies, in said city of Chicago, Cook County, Ill., or elsewhere in said State of Illinois, as said corporation may, by vote of the majority of the stockholders, elect; and to purchase, hold, sell, operate, or any wise become interested in coal or other properties productive of material necessary or useful in the supply or manufacture of gas, or other agency or medium of light, heat, power, or fuel, and to sell, improve, enlarge, extend, maintain, operate, or demise any and all property so purchased or leased.

Prior to the formation of this corporation there were four separate and independent gas companies doing business in the city of Chicago, and the new corporation acquired and held a majority of the capital stock of these four gas companies, thereby controlling

[a] Cited and approved in Northern Securities case (193 U. S., 341).

the same. Upon information in the nature of a *quo warranto*, the question presented was, whether or not the gas company had the right to purchase and hold the stock of the other gas companies. The court held that the power to purchase and hold stocks of other companies could not be regarded as incidental to the power to operate gas works and to make and sell gas, and that therefore the power to hold stock could only be exercised if it were expressly granted. The court further held that this power could not be obtained under a general corporation law unless the purpose in view was a lawful purpose. It was held that the purpose of the gas trust company in acquiring the capital stock of the four independent concerns was illegal, and the grounds of the decision may be seen from the following extracts from the court's opinion:

> What results must necessarily follow from such ownership of a majority of the shares of stock of these four companies?
>
> One result is that the Chicago Gas Trust Company can control the four other companies. The question is not whether it has attempted to exercise such control; the law looks to the general tendency of the power conferred. (Greenhood on Public Policy, p. 5; *Richardson* v. *Crandall*, 48 N. Y., 343; *Salt Co.* v. *Guthrie*, 35 Ohio St., 666.) The sixth section of the general incorporation act provides that the corporate powers shall be exercised by a board of directors or managers, and that the number of such directors or managers, and their terms of office, shall depend upon the "consent of the owners of a majority of the shares of stock." It can

not be denied that the appellee, as owner of the majority of the shares of stock of these four companies, can control them, in the exercise of all their corporate powers, through a board of managers of its own selection.

In *Weidenger* v. *Spruance* (101 Ill., 278) this court, speaking through Mr. Justice Scholfield, said: "The stockholders elect the directors and through them carry into effect the corporate functions. Presumably, the directors act in obedience to the aggregate wishes of the stockholders," etc. (*Milbank* v. *N. Y., L. E. & W. R. R. Co.*, 64 How. N. Y. Rep., 29.)

The control of the four companies by the appellee—an outside and independent corporation—suppresses competition between them, and destroys their diversity of interest and all motive for competition. There is thus built up a virtual monopoly in the manufacture and sale of gas.

* * * * *

Whatever tends to prevent competition between those engaged in a public employment, or business impressed with a public character, is opposed to public policy, and, therefore, unlawful. Whatever tends to create a monopoly is unlawful as being contrary to public policy. (2 Addison on Cont., 743; Greenhood on Public Policy, pp. 180, 643, 654, 655, 670; *Morris Run Coal Co.* v. *Barclay Coal Co.*, 68 Pa. St., 173; *Craft* v. *McConoughy*, 79 Ill., 346; *Central R. R. Co.* v. *Collins*, 40 Ga., 582; *Hazelhurst* v. *Savannah R. R. Co.*, 43 id., 13; *Trans. Co.* v. *Pipe Line Co.*, 22 W. Va., 600.)

* * * * *

If contracts and grants whose tendency is to create monopolies are void at common law, then where a corporation is organized under a general statute, a provision in the declaration of its corporate purposes, the necessary effect of which is the creation of a monopoly, will also be void.

* * * * *

But of what avail is it that any number of gas companies may be formed under the general incorporation law, if a giant trust company can be clothed with the power of buying up and,holding the stock and property of such companies, and, through the control thereby attained, can direct all their operations and weld them into one huge combination? The several privileges or franchises intended to be exercised by a number of companies are thus vested exclusively in a single corporation. To create one corporation for the express purpose of enabling it to control all the corporations engaged in a certain kind of business, and particularly a business of a public character, is not only opposed to the public policy of the State but is in contravention of the spirit, if not the letter, of the Constitution.

That the exercise of the power attempted to be conferred upon the appellee company must result in the creation of a monopoly results from the very nature of the power itself. If the privilege of purchasing and holding all the shares of stock in all the gas companies of Chicago can be lawfully conferred upon the appellee under the general incorporation act, it can be lawfully conferred

upon any other corporation formed for the purpose of buying and holding all the shares of stock of said gas companies. The design of that act was that any number of corporations might be organized to engage in the same business if it should be deemed desirable. But the business now under consideration could hardly be exercised by two or three corporations. Suppose that after appellee had purchased and become the holder of the majority of shares of stock of the four companies in Chicago, another corporation had been organized with the same object in view—that is to say, for the purpose of purchasing and holding a majority of the shares of stock of the gas companies in Chicago. There being only four such companies, what would there be for the corporation last formed to do? It could not carry out the object of its creation, because the stock it was formed to buy was already owned by an existing corporation. Hence to grant to the appellee the privilege of purchasing and holding the capital stock of any gas company in Chicago is to grant to it a privilege which is exclusive in its character. It is making use of the general incorporation law to secure a special "privilege, immunity, or franchise;" it is obtaining a special charter, under the cover and through the machinery of that law, for a purpose forbidden by the Constitution. To create one corporation that it may destroy the energies of all other corporations of a given kind and suck their life blood out of them, is not a "lawful purpose."

* * * * *

> We held, in *Chicago Gas Light Co.* v. *People's Gas Light Co.*, *supra*, that for the reasons there stated, a contract between two of these four companies, the effect of which was to stifle competition between them and necessitate an abandonment of their public duties, was against public policy and could not be enforced. The attempt to consolidate the two companies, by placing the majority of their stock in the hands of the appellee, would accomplish the same unlawful result which was sought to be attained by the forbidden contract.

Harding v. *American Glucose Company* (55 N. E., Ill., 577).—Prior to the organization of the Glucose Sugar Refining Company of New Jersey, in 1897, certain option contracts had been secured upon the various plants and properties afterwards taken in by that company. These options ran to a Chicago trust company, and in some instances provided that the purchase price was to be paid partly in cash and partly in stock, and in other instances that the price might be paid in stock and cash. They further provided that the vendor corporation should not engage in the handling or manufacture of glucose for certain terms of years within 1,000 miles of Chicago. Upon the formation of the new corporation the options were turned over to it, and several properties of the vendor corporations were also transferred. A stockholder of the American Glucose Company, a New Jersey corporation, doing business in Peoria, and one of the above-mentioned vendor corporations, objected to

the transfer of the plant, and filed a bill to enjoin the same. The American Glucose Company and several of its officers filed their answers, to which replications were also filed, and some evidence was taken on behalf of the plaintiff. Subsequently the answers were withdrawn, and the complainants were enabled to take a decree pro confesso. The decision of the court, however, was based not merely upon the allegations of the bill, but also upon the answers, replications, and evidence. The Supreme Court of Illinois, in sustaining the complaint and granting the relief, said, among other things:

> A trust has usually appeared in the form of an agreement between stockholders in many corporations to place all their stock in the hands of trustees, and to receive trust certificates therefor from the trustees. But the question in the present case is whether a trust is created where a majority of stockholders consolidate their interests by conveying all their property to a corporation organized for the purpose of taking their property. Any combination of competing corporations for the purpose of controlling prices, or limiting production, or suppressing competition, is contrary to public policy, and is void. (2 Cook, Corp. (4th ed.), 503a.) It makes no difference whether the combination is effected through the instrumentality of trustees and trust certificates, or whether it is effected by creating a new corporation and conveying to it all the property of the competing corporations. The test is whether the necessary consequence of

the combination is the controlling of prices, or limiting of production, or suppresssing of competition, in such a way as thereby to create a monopoly.

* * * * *

The public policy of a State is to be found in its statutes, and when they have not directly spoken, then in the decision of the courts, and in the constant practice of government officials. When the legislature speaks upon a subject upon which it has the constitutional power to legislate, public policy is what the statute passed by it indicates. (*U. S.* v. *Trans-Missouri Freight Assn.*, 166 U. S., 290; 17 Sup. Ct., 240.) The public policy of the State of Illinois has always been against trusts and combinations organized for the purpose of suppressing competition and creating monopoly.

* * * * *

The contention of counsel for the Glucose Sugar Refining Company that the American Glucose Company had a right to make a sale of its plant to the new corporation, and that this transaction must be regarded by the court merely as a valid sale, is not supported by the allegations of the pleadings or by the proofs herein. The transfer of its property made by the American Glucose Company was a transfer to a corporation created for the express purpose of taking its property and the property of other corporations, so as to use them in the suppression of competition, and in the creation of a monopoly in the manufacture of glucose and grape sugar and their products

> and by-products. The whole scheme, as devised and consummated, was a fraud, not only on the public, but upon the dissenting stockholder filing this bill. We are therefore of the opinion that the bill was not demurrable because brought by a stockholder, and that the court below erred in sustaining the demurrer, if it was sustained upon that ground alone.

While we are thus discussing the Illinois cases, it might be important to refer to a very late case in the Supreme Court of Illinois bearing upon this question, the case of *Dunbar* v. *American Telephone and Telegraph Co.* (79 N. E., 423). In that case three of the principal companies engaged in manufacturing switchboards, instruments, and other apparatus for conducting electricity, were the American Telephone and Telegraph Company, the Kellogg Switch Board and Supply Company, and the Stromberg-Carlson Company. It appears by the case that the American Company, in order to get control of the business and for the purpose of monopolizing the same, purchased the majority of the stock of the Kellogg Company; and this was a suit by the minority stockholders to have the purchase declared void, one of the principal grounds being that it tended to a monopoly. In the decision the court said:

> We think, however, that it sufficiently shows, against a general demurrer, that the American Company, through defendant Barton and others, became the purchaser of the shares of stock with the unlawful purpose and

intention of putting the Kellogg Company out of business, or so using and controlling it as to prevent rivalry in business and creating a monopoly, and it called for an answer from defendants. If such was the purpose and object of the purchase, the decisions of this court are full to the effect that the law will not lend its aid to accomplish the object. That is to say, if the American Company had purchased a majority of the capital stock of the Kellogg Company in its own name for the purpose of controlling the latter and thereby preventing competition between itself and the latter corporation, the transaction would have been one which the courts of this State would not uphold. (*People* v. *Chicago Gas Trust Co.*, 130 Ill., 288, 22 N. E., 798, 8 L. R. A., 497, 17 Am. St. Rep., 319; *Distilling Co.* v. *People*, 156 Ill., 448, 41 N. E., 188, 47 Am. St. Rep., 200; *Bishop* v. *American Preservers' Co.*, 157 Ill., 284, 41 N. E., 765, 48 Am. St. Rep., 317; *Harding* v. *American Glucose Co.*, 182 Ill., 551, 55 N. E., 577, 64 L. R. A., 738, 74 Am. St. Rep., 189.) Nor can it be seriously contended that a purchase by the company in the name of others, as agents or trustees, will relieve the transaction of its illegality. To hold otherwise would be to sustain a transaction illegal in its character, accomplished by indirection, when it could not be done if the methods were direct. (*Northern Securities Co.* v. *United States*, 193 U. S., 197; 24 Sup. Ct., 436; 48 L. Ed., 679, affirming the decision of the Circuit Court in the same case in 120 Fed., 721.) The American Company and its subcompany,

> the Western Electric Company, must be considered as one in determining whether the tendency of the purchase alleged in the bill would be to suppress the competition existing between the Kellogg Company and the Western Electric Company in the manufacture and sale of telephone appliances, etc. Neither is it material that the Kellogg and Western Electric companies were not the only parties engaged in manufacturing such appliances, for the reason that, if such was the case, while a complete monopoly or a complete restraint of competition would not necessarily result, the tendency would be in that direction, which is sufficient to condemn the transaction as unlawful. (*People* v. *Chicago Gas Trust Co.*, *supra; More* v. *Bennett*, 140 Ill., 69, 29 N. E., 888, 15 L. R. A., 361, 33 Am. St. Rep., 216.)

In the case of the *National Lead Company* v. *The Grote Paint Store Company* (80 Mo. App., 247), a trust agreement had been in existence which was evidently patterned after the Standard Oil agreement. The authors of this trust agreement were, undoubtedly, aware of the decision in the Cattle Feeding case, which was rendered in February, 1890, and the decision in the Sugar Refining case in New York, which was rendered in January, 1889, for it appears that in August, 1891, the holders of the trust certificates of the National Lead Trust made and adopted a resolution authorizing the trustees of the National Lead Trust to carry out a plan of reorganization. The substance of this plan involved the creation of a new corporation to take over the property and assets of

the constituent members of the trust. The transfer of properties to the new corporation was accomplished as follows: The corporations whose stocks had been turned over to the National Lead Trust conveyed their plants and assets to the plantiff corporation through the medium of a conveyance to the secretary of the reorganization committee and a conveyance by him to the new corporation. The properties transferred were paid for by the stock of the new corporation, which was delivered to the reorganization committee to be handed by the committee to the parties entitled to the certificates issued by the trust which had been deposited with the committee. In this way the new corporation became the owner of the assets and stock of all the corporations in Missouri engaged in the lead business. The case arose in this way: A suit for a sum of money upon account stated was brought by the National Lead Company against the purchasers of goods, and the principal defense was that the plaintiff was the corporate successor of the illegal combination formed by the stockholders of 12 corporations to establish a trust designed to limit the price and production of goods of the kind sued for, and that the corporation was organized to effectuate that end. This defense was authorized by the statute of Missouri. The trial court overruled the defense interposed, and on appeal this decision was reversed and the case remanded with instructions to proceed in accordance with the opinion. The case was decided by the Court of Appeals of Missouri, and, while not the highest court of the State, the opinion

is an able exposition of the law on this subject. The principal point in the case is discussed in the following extracts from the court's opinion (p. 266 et seq.):

> The crucial question in this case is whether the plaintiff corporation, either in its organization or business operations in this State, has offended any of the provisions of its laws? That the predecessor of the plaintiff, the "National Lead Trust," was an unlawful combination, both in purpose and fact, is sufficiently established by the nature of the agreement under which it was created and the methods and practices resorted to in furtherance of that agreement. The agreement in question can only be construed as a contract to suppress competition, fix the prices of commodities and limit their production, and to restrain trade. Unless some one or all of these purposes had been entertained by the signers of the trust agreement, it would have not contained provisions looking to the acquisition by the trustees of the entire lead business of the country, nor would it have united in the accomplishment of that end a majority of the stockholders of the largest corporations dealing in that product. That it had these objects in view and practically accomplished them is evident from the fact that it started with a concert of 8 corporations and terminated after having issued ninety million of trust certificates and after it formed a combination of 30 corporations, constituting a large majority of the lead dealers of the country, who had united

themselves together in the effort to realize dividends upon the aforesaid capitalization out of assets of less than one-fourth in value of the amount for which trust certificates had been issued. While the conclusion of the illegal purpose of the trust agreement is irresistible upon a consideration of its several provisions and the manner in which they were carried out, it will appear from an examination of the cases that this result has been declared by every court called upon to review that agreement, or others substantially like it. (*State ex rel.* v. *Standard Oil Co.*, 49 Ohio St., 137; *Distillers, etc., Co.* v. *The People*, 156 Ill., 448; *Bishop* v. *A. Preserving Co.*, 157 Ill. loc. cit., 311; *People* v. *N. R. S. R. Co.*, 121 N. Y., 582; *Uncles* v. *Colgate*, 148 N. Y., 529; *U. S.* v. *Freight Ass'n.*, 166 U. S., 290; *U. S.* v. *Joint Traffic Ass'n.*, 171 U. S., 505.) But the illegality of the organization and operation of the National Lead Trust does not involve the conclusion that the purchaser of its assets, whether a natural or artificial person, succeeded also to the status of that illegal combination under the laws enacted in this State for the punishment of pools, trusts, and conspiracies. For the mere purchase by one of the assets which another has employed for an illegal purpose does not of itself imply that they will be used by the purchaser for the purpose of effectuating the objects to which they had been devoted by the seller. Such an intent on the part of the purchaser, if inferable, must be gathered from proof of all the circumstances characterizing

the transaction, as well as his subsequent conduct. As to these sources of proof, the record in the case under review shows that the beneficial owners of the property were the subscribers to the National Lead Trust and holders of its certificates, and that these same persons remained the beneficial owners of the same property after it was converted into the capital of the plaintiff corporation, the only difference being that each holder of a trust certificate received in lieu thereof shares of stock in the new corporation at an agreed rate of exchange, and the further fact that the legal title to the property was put into a corporate entity of a body of 9 trustees appointed under the trust agreement. The sale itself was titular, rather than real. The corporation was professedly created to acquire the assets of the preceding trust. It was formed by the express authorization of the members of the trust and required to have "such purposes" and "such powers" as should be approved by the agents of the trust. In all other respects the fullest details of the organization of the future corporation were exactly defined and strictly prescribed in the formal resolution, adopted by the members of the National Lead Trust, directing certain agents (reorganizing trustees) to secure the specified charter of incorporation.

By the terms of this resolution the projected corporation was not permitted to be formed independently of the capital furnished by the Lead Trust, nor was it permitted to

be endowed with any "purposes" or "powers" which were not approved by the reorganizing trustees directed to obtain its charters. Moreover, in point of fact, it was actually created and organized in the strictest conformity with the requirements of said resolution and under a charter empowering it to carry on the business of manufacturing lead and its kindred products without restriction, and which expressly authorized it "to purchase * * * all such stocks, bonds, securities, and obligations of other companies or corporations" as might be convenient in the prosecution of its business. By the obtention of the latter and other grants of power (in its charter) the plaintiff corporation secured for itself every faculty possessed by its predecessor (the National Lead Trust) for engrossing the entire business of the country in the commodities in which it was authorized to deal. For it can not be maintained that the trust had any power to acquire the stocks and bonds of other corporations engaged in the same business—and thus stifle competition—which was not expressly granted to the plaintiff in the amplest measure by the above-quoted clause in its charter empowering it, in effect, to do the same thing. If, therefore, the preceding trust was an unlawful combination under the laws of this State, as declared in the acts of 1891 (then in force), it must follow that the plaintiff corporation is equally amenable to said acts, if, as the record shows the fact to be, it actually engaged through the same methods and for identical objects in a

similar business to that of the former trust, unless there is something in the mere fact of the plaintiff's corporate character which exempts it from the application of the law prohibiting combinations to fix the price or quantity of products, or to restrain trade. The learned counsel for respondent seems to claim such an exemption for the plaintiff. In discussing the question thus presented we will concede for argument only that a private business or manufacturing corporation, which has no implied power as such to purchase shares of stock in rival corporations, may acquire such a right under the laws of New Jersey if provided for in the articles of incorporation. The first section of the act of 1891, supra, provides that any corporation, wherever created, which is "organized to do business in this State, or any * * * individual or other association of persons whatsoever who shall create, enter into, become a member of or a party to any pool, trust agreement, combination, confederation, or understanding with any other corporation * * * individual or any person or association of persons, to regulate or fix the price of any article of merchandise or commodity," or in the same manner "to fix or limit the amount or quantity of any article, commodity, or merchandise to be manufactured, mined, produced, or sold in this State, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subjected to penalties as provided in this act." Can it be rationally held that the legislature

had in view the commission of the criminal offense created in the foregoing section by a corporation as such, separate and apart from the individuals composing it? There is no legal ground upon which such a view can be entertained. A corporation can only act through its members or their agents.

The corporate entity with which the law clothes it for special purposes is not self-acting, hence there was no thought of its action only, in the mind of the framers of the statute. The evident purpose of the legislature was to specify certain acts, which, if done by its stockholders or governing bodies, should constitute a crime on the part of the corporation. It did not contemplate the commission of an offense by an impalpable abstraction, which could neither think nor act; but it intended to bind this corporate entity by the imputed actions of its human agencies. In other words, the legislature referred to the corporation in its true essence as an association of persons without which it could not exist, and through whom alone it must perform all its functions as a corporate being. (Morawitz on Corporations, sec. 227; Taylor on Corporations, sec. 51; *State* v. *Standard Oil Company*, 49 Ohio St., 137; *Buffalo Oil Company* v. *Standard Oil Company*, 106 N. Y., 699; *Boogher* v. *Life Association of America*, 75 Mo., 319.) Hence it must follow that if the stockholders and governing officers of the plaintiff corporation combined with each other to violate any of the provisions of the section under review through the instrumentality of their corporate entity, then the corpo-

ration composed by them was a party to such illegal combination within both the letter and the spirit of the above section of the act of 1891. Or concretely stated, that a combination which is illegal under the antitrust law can not be operated under the cloak of a corporation by its constituent members or governing bodies. This conclusion is believed to be irresistible in reason and has received the unwavering support of the courts and the text writers. (*Ford* v. *Milk Shippers' Assn.*, 155 Ill., 166; *People* v. *Gas Co.*, 130 Ill., 275; *Distilling Co.* v. *People*, 156 Ill., 448; *Strait* v. *National Harrow Co.*, 18 N. Y. Supp., 224; Beach on Monopolies, sec. 159; Hirsch on Com. Corp., p. 86; *Am. Biscuit & Mfg. Co.* v. *Klotz*, 44 Fed. Rep., 723; *National Harrow Co.* v. *Quick*, 67 Fed. Rep., 130; *Merz Capsule Co.* v. *U. S. Capsule Co.*, 67 Fed. Rep., 414.) In the case of *Ford* v. *Milk Shippers' Assn.*, *supra*, the members of a milk trust subsequently incorporated brought action against a purchaser of the commodity sold by the corporation, who defended on the ground that it was formed in furtherance of a trust scheme and transacting business in contravention of an antitrust act substantially the same as that pleaded in defendant's answer in the present action. It was insisted for the plaintiff that being a corporation it could not violate the statute, to which defense the supreme court of Illinois answered as follows: "The corporation as an entity may not be able to create a trust or combination with itself, but its individual shareholders may, in controlling it, together with it, create such trust or combination that

> will constitute it, with them, alike guilty." The point in judgment in that case is identical with the issue presented in the one before us. The conclusion reached by the Illinois court is logical, fully sustained by the above and other authorities, and in exact accord with the views heretofore expressed in this opinion.

The illegality of the original combination known as the National Lead Trust was assumed, if not expressly decided, in *Unckles* v. *Colgate* (148 N. Y., 529).

This Missouri case was cited and approved in the late case of *Finck* v. *Schneider Granite Co.* (86 S. W. (Mo.), 213).

A recent case in this court has a very strong bearing upon this question. We refer to the case of *Shawnee Compress Company* v. *Anderson* (209 U. S., 423, affirming 17 Okla., 231). The Shawnee Company owned and operated a cotton compress in the State of Oklahoma. The Atlanta Compress Company operated in the States of Alabama, Georgia, and Florida, and the Gulf Compress Company in the States of Alabama, Mississippi, Tennessee, Louisiana, Arkansas, Indian Territory, and Oklahoma. One C. C. Hanson was the president of both the Gulf and the Atlanta companies, and he and Stubbs and Beattie were stockholders and directors in each of these companies. The Shawnee Company was financially embarrassed, and a majority of the board of directors leased all of the property to the Gulf Company and agreed not to "directly or indirectly engage in the compressing of

cotton within 50 miles of any plant operated by the tenant." Upon a suit by minority stockholders the lease was held void. A writ of error was sued out to this court, which held the lease void both at common law and under the Sherman Act. This court said (p. 434):

> This case presents something more than the lease of property by the Shawnee company, induced or made necessary by financial embarrassment. It presents something more than the acquisition by the Gulf company of another compress—of a mere addition to its business. It presents acts in aid of a scheme of monopoly.
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> * * * * *
>
> It does not appear whether the Supreme Court based its judgment upon the common law, the Sherman law (act of July 2, 1890, chap. 647, 26 Stat., 209), or the statutes of Oklahoma. The appellees insist that the law applicable to the case comes from all three sources.

The court then considered the Sherman Act, the principles of the common law as applicable to such contracts, and affirmed the judgment of the Supreme Court of Oklahoma, holding in substance that, whether judged by the Sherman Act or by the principles of the common law, the contract was void. The court stated the rule of the common law to be:

> The restraint upon one of the parties must not be greater than protection to the other party requires, and it needs no further explanation than is given in *Gibbs* v. *Baltimore*

> *Gas Co.* (130 U. S., 396). The Supreme Court of the Territory recognized the principle, but said: "Tested by the general principles applicable to contracts of this character, this agreement is far more extensive in its outlook and more onerous in its intention than is necessary to afford a fair protection to the lessee."

The opinion of Judge Taft in the Circuit Court of Appeals in *United States* v. *Addyston Pipe & Steel Co.* (85 Fed., 279) contains a very able analysis of the common law as applied to combinations in restraint of trade and of the Sherman Act. Judge Taft reviewed the authorities with great care, and we submit that within the reasoning of that opinion the trust agreements of 1879 and 1882 are void. He held, of course, that at common law agreements in general restraint of trade were void, but that certain partial restraints of trade were upheld by the courts, but only when they were incidental to a lawful business. Judge Taft said:

> For the reasons given, then, covenants in partial restraint of trade are generally upheld as valid when they are agreements (1) by the seller of property or business not to compete with the buyer in such a way as to derogate from the value of the property or business sold; (2) by a retiring partner not to compete with the firm; (3) by a partner pending the partnership not to do anything to interfere, by competition or otherwise, with the business of the firm; (4) by the buyer of property not to use the same in competition with the busi-

ness retained by the seller; and (5) by an assistant, servant, or agent not to compete with his master or employer after the expiration of his time of service. Before such agreements are upheld, however, the court must find that the restraints attempted thereby are reasonably necessary (1, 2, and 3) to the enjoyment by the buyer of the property, good will, or interest in the partnership bought; or (4) to the legitimate ends of the existing partnership; or (5) to the prevention of possible injury to the business of the seller from use by the buyer of the thing sold; or (6) to protection from the danger of loss to the employer's business caused by the unjust use on the part of the employee of the confidential knowledge acquired in such business.

Then follows a careful review of the cases upon this subject.

The combination in the case at bar does not come within any of the conditions named by Judge Taft and supported by the authorities. In the case at bar it appears that the primary object of the combination was the restraint of trade, the combination of a large number of independent, separate concerns engaged in the manufacture, shipment, and sale of oil. It can not be claimed that the restraint of trade was simply incident to the legal acquisition of property, for there was no purchase of property; there was simply an amalgamation or combination of stock interests. But even if it be assumed, for the purpose of the argument, that there was a purchase of the property, it is nevertheless well-settled law that

where property is acquired for the purpose of suppressing competition the acquisition is void. This rule is clearly stated by Judge Taft, on page 291, as follows:

> But in recent years even the fact that the contract is one for the sale of property or of business and good will, or for the making of a partnership or a corporation, has not saved it from invalidity if it could be shown that it was only part of a plan to acquire all the property used in a business by one management with a view to establishing a monopoly. Such cases go a step further than those already considered. In them the actual intent to monopolize must appear. It is not deemed enough that the mere tendency of the provisions of the contract should be to restrain competition. In such cases the restraint of competition ceases to be ancillary and becomes the main purpose of the contract, and the transfer of property and good will, or the partnership agreement, is merely ancillary and subordinate to that purpose. The principal cases of this class are *Richardson* v. *Buhl* (77 Mich., 632; 43 N. W., 1102), *Arnot* v. *Coal Co.* (68 N. Y., 558), *People* v. *Milk Exchange* (145 N. Y., 267; 39 N. E., 1062), *People* v. *Refining Co.* (54 Hun, 366; 7 N. Y. Supp., 406), *State* v. *Nebraska Distilling Co.* (29 Nebr., 700; 46 N. W., 155), *State* v. *Standard Oil Co.* (49 Ohio St., 137; 30 N. E., 279), *Manufacturing Co.* v. *Klotz* (44 Fed., 721), *Distilling & Cattle Feeding Co.* v. *People* (156 Ill., 448; 41 N. E., 188), *Carbon Co.* v. *McMillin* (119 N. Y., 46; 23 N. E., 530),

Harrow Co. v. *Hench* (83 Fed., 36), *Factor Co.* v. *Adler* (90 Cal., 110; 27 Pac., 36), *Lumber Co.* v. *Hayes* (76 Cal., 387; 18 Pac., 391).

It will be noted that Judge Taft here cites and approves many of the cases cited in this brief, such as *Richardson* v. *Buhl* (77 Mich., 632), *State* v. *Standard Oil Co.* (49 Ohio St., 137), *State* v. *Nebraska Distilling Co.* (29 Nebr., 700), *Distilling & Cattle Feeding Co.* v. *People* (156 Ill., 448), all of which cases have been cited and the doctrines therein announced approved by this court.

The case of *Pocahontas Coke Co.* v. *Powhatan Coal & Coke Co., supra,* directly bears upon the invalidity of the trust agreements of 1879 and 1882. In that case the Pocahontas Coke Company was organized, with a capital of $150,000, for the purpose of facilitating the manufacture, inspection, and shipment of coke from the Pocahontas field, and to regulate, improve, and standardize the quality of coke manufactured in the district. The operators of the coke ovens, some 20 corporations, subscribed to the stock, one share for each oven operated. Immediately upon the allotment of the stock the Pocahontas Company took a contract with each one of the coke ovens for the sale of its coke, for a period of three years, on a commission of 5 cents a ton. It was provided that no one could subscribe for stock until he had entered into such a three-year contract. The corporation was to be controlled by three trustees elected by the stockholders. The surplus, after the payment of the operating expenses, was to be

divided among the stockholders, "each stockholder to have the same proportion of such surplus as the number of tons of coke furnished by him bears to the whole number of tons of coke furnished to said company for sale." The court held this to be in unreasonable restraint of trade and void at common law, and also to be a monopoly. The court said (56 S. E., p. 270):

> It may be said in this connection that the determination of the question whether or not a contract is in restraint of trade is to be arrived at in exactly the same way and under exactly the same rules, whether the case falls under the provisions of the act of Congress or under the rules of the common law. The difference between the act and the common law does not lie in the manner of ascertaining whether or not restraint exists, but in the degree of restraint required to render the contract illegal. Under the act of Congress any restraint is illegal, while under the common law only unreasonable restraint is illegal.

Commenting upon this contract the court said (p. 272):

> For the purposes of these contracts the 20 coke manufacturing and producing corporations were welded into a single concern so far as the market was concerned, without any endeavor to transfer their several properties We do not think that anyone can carefully read the two contracts, in the light of the allegations of the bill, without coming to the conclusion that the appellee, the new corporation, was merely an instrument or means to an

end, operated, owned, and controlled by the 20 corporations parties to contract A. Every act of this new agent corporation within the powers of these contracts is merely the act of the 20 corporations in conjunction. The practical effect is that the majority of the stock of the appellee, which is apportioned among the 20 corporations according to the ovens owned by them, controls its operations. Each of the parties to contract A has a voice in the control of appellant to the extent only of the stock of such party, which, unless a majority, is insufficient to control. If one of these corporations has a majority of stock, it may fix the selling price, not only of its own production but of the production of the others by controlling the agent corporation. If one of these corporations has less than a majority, it may not control the selling price of its own production, or the price of the production of any of the others. The effect of the combination created by means of the contracts mentioned would not be different if the 20 corporations had agreed to exercise the powers conferred by the contracts in conjunction in their own names without an agent, or if a natural person had been made the agent instead of the new corporation. It may be said that the agent corporation agrees to guarantee the price to each of the parties; but, in its analysis, it is the guaranty of an incorporated company, the stockholders of which are the 20 corporations mentioned. It clearly appears to us that all competition is destroyed among the 20 corporations by these contracts and this combination, and that they tend to

> restrain competition between the 20 corporations and others engaged in the same business. Illustrating how competition is destroyed among the 20 corporations, let us suppose that a contract for furnishing coke is to be let at a given time and place. Who is to be there to represent each of the 20 corporations separately in competition for that contract? Evidently no one, for this is an exclusive agency. The agent of the combination is to be there; but is it to be there for the purpose of having these several corporations compete with each other? No; it is to be there for the purpose of acting as agent for the combination, making a single negotiation for the contract, without competition among these corporations.

The court also held this void as a monopoly, and said (p. 271):

> It is no defense to the illegality of a contract or combination which is in unreasonable restraint of trade to show that in the particular case a complete monopoly has not been formed or that no control of prices has been exercised, or that prices have been lowered and not raised. (*U. S.* v. *Addyston Pipe & Steel Co., supra;* Brannon, 14th Amend., *supra;* 20 Am. & Eng. Enc. Law, 850.) If a contract or combination in unreasonable restraint of trade could not be attacked until a complete monopoly had been formed, then the law against monopolies would be unavailing. In this country it would be almost impossible to combine all the interests in any line of industry into a single and complete monopoly. If

only complete monopolies could be reached under the law, a combination could then be formed tending to monopoly and embracing substantially all the evil results of a complete monopoly, intentionally leaving out of the combination some one or more of those engaged in the industry, for the very purpose of rendering the combination legal.

* * * * *

(P. 273.)

It is claimed that this contract can not be declared illegal because it does not appear what part or per cent of the total production of the Pocahontas-Flat Top coal field is produced by the 20 corporations. It is said that together they may produce only 1 per cent of the total production of the field. As we have said before, it is not essential that the monopoly be complete before it is illegal. Unreasonable restraint of trade, which is only partial, is illegal. (*Charleston Nat. Gas Co.* v. *Kanawha Nat. Gas, Light & Fuel Co., supra.*) As to this feature of the case, and upon the question of the reasonableness of the restraint of trade, we are assisted in reaching our conclusion by cases previously decided by this and other courts. In the case of *Slaughter* v. *Thacker Coal & Coke Co., supra*, the combination was composed of only 3 coal companies, and the contract was held illegal and void, because it tended to suppress competition and restrain trade contrary to public policy. In *Charleston Nat. Gas Co.* v. *Kanawha Nat. Gas, Light & Fuel Co., supra*, a contract between 2 gas companies, restraining competi-

> tion and controlling prices, was held illegal. In the case of *C. & O. Fuel Co.* v. *U. S.*, *supra*, the combination was among 14 firms, persons, and corporations producing and dealing in coal, and the combination was held illegal under the act of Congress, and according to the principles there announced would no doubt have been held illegal under the common law.

It is hard to distinguish the foregoing case from the Standard Oil Trust of 1879 and 1882. The combination of all these stocks, of some 40 different, independent, manufacturing, shipping, and selling concerns, in the hands of Vilas, Keith & Chester in 1879, and in the hands of the nine trustees in 1882, more effectively controlled the corporations, regulated the production and prices, and suppressed competition between them, than could the organization of a selling company which only controlled a small percentage of the total production of this coal field. Furthermore, as said by the court in the *Pocahontas case*, it is not a complete monopoly, but that which tends to monopoly, which the common law prohibits.

In *Continental Wall Paper Co.* v. *Lewis Voight & Sons Co.* (148 Fed., 939; affirmed 212 U. S., 227) about 98 per cent of the wall-paper manufacturers entered into a combination whereby a corporation was to purchase all of the output of the manufacturers at a uniform price, subject to the agreed scale of discounts. The difference between the price at which the manufacturers sold to the plaintiff and the price

it received was divided as a dividend to the shareholders, who were composed exclusively of the combining manufacturers. There are various other provisions of the contract. The stock of the wall-paper company was distributed in proportion to the size of the manufacturer's product the year before the plaintiff was organized. This was a suit to recover for paper sold. The opinion was written by Judge Lurton, and concurred in by Judges Severens and Cochran. The court held that the combination was void, both at common law and under the Sherman Act. The court said:

> As to the first point, it need only be said that the legality of the contract between the combining companies at common law, as imposing only a reasonable restraint upon the freedom of competition, is not a defense if the dominant purpose of the agreement and the direct result of its operation is to directly, and not incidentally, restrain freedom of commerce between the States or with foreign nations. Until the Supreme Court shall otherwise hold, we feel concluded by the meaning placed upon the act by *United States* v. *Freight Association* (166 U. S., 290; 17 Sup. Ct., 540, 41 L. Ed., 1007), *United States* v. *Joint Traffic Association* (171 U. S., 505; 19 Sup. Ct., 25, 43 L. Ed., 259), *Chesapeake & O. Fuel Company* v. *United States* (115 Fed., 610; 53 C. C. A., 256), and not departed from in *Northern Securities Company* v. *United States* (193 U. S., 197, 331; 24 Sup. Ct., 436, 48 L. Ed., 679). But we think the combination and agreement

shown by Exhibit 1 comes within the prohibition of the act of Congress, whether that act be aimed only at unreasonable restraints or not. That contract and agreement is one between 98 per cent of all the wall-paper makers in the United States, who cooperate through a corporation organized by them for the single purpose of selling their gross product. That there shall be no competition between the combined companies is insured by the agreement that each manufacturer shall sell his entire product at an agreed price to the plaintiff corporation, which is to nominally make all sales, either directly or indirectly, at a uniform price, subject to an agreed scale of discounts, varying only according to an arbitrary classification of buyers. The difference between the price at which the so-called "vendors" sell to the plaintiff company and the price exacted from those who buy from it will be profit, and the profits will constitute the dividends to be distributed to plaintiff's shareholders, and plaintiff's shareholders are exclusively composed of the combining companies, called "vendors;" its comparatively insignificant amount of stock being placed with these vendors in proportion to the product of the year before the combine took effect. To prevent the enlargement of the product of any one of the vendors, it is provided, in effect, that there shall be no enlargement of plant, though new machinery may be used to replace old or that destroyed. * * *

A more complete monopoly in an article of universal use has probably never been brought

about. It may be that the wit of man may yet devise a more complete scheme to accomplish the stifling of competition; but none of the shifts resorted to for suppressing freedom of commerce and securing undue prices, shown by the reported cases, is half so complete in its details. None of the schemes with which this may be compared is more certain in results, more widespread in its operation, and more evil in its purposes. *It must fall within the definition of a "restraint of trade," whether we confine ourselves to the common-law interpretation of that term or apply that given to the term as used in the federal act by the cases we have cited above.*[*]

In affirming this case Mr. Justice Harlan quoted the above language with approval.

The case of *Finck* v. *Schneider Granite Co.* (Missouri, 86 S. W., 213) sustains the proposition laid down in the Pocahontas Coal case, that such an agreement or combination is void at common law. In this case the owners of five crushed stone plants organized a selling company and made a contract to sell all their product to this company at a stipulated price. The contract was somewhat similar to the contract in the Pocahontas Coal case. The court held the same to be void at common law and also under the statutes of Missouri. Among other things the court said (86 S. W., pp. 219–220):

Taking up these propositions separately, the referee is of the opinion that the defense does

[*] The italics are ours.

not necessarily assail the validity of the charter. The validity of the contract in suit is assailed on the ground that it is in violation of the policy of the law of this State as declared by both the common law, the statute of the State, and the statute of the United States. It is the use to which the corporate organization is put which is here assailed. The corporation is a valid corporate entity. It can carry out in good faith the purposes declared in its articles of association, which, as declared, are legitimate enough. The corporation simply departs from these declared purposes, and suffers itself to be used as a cover for making effective a conspiracy against the law, admitting, of course, that there is such a conspiracy. That is the real question. If this is such an illegal conspiracy, then the referee is of the opinion that this contract is plainly beyond the powers and scope of the corporation. In so holding, no objection is made to the validity of its corporate existence. It can proceed to do all things that are legal and proper for it to do. But, if it were necessary, there is not wanting authority to sustain the proposition that the very validity of the corporation organization may be collaterally assailed where the unlawful conspiracy exists in the articles of association of the corporation. This point was distinctly decided by the St. Louis Court of Appeals in the controlling case of *National Lead Co.* v. *Grote* (80 Mo. App., 247). The court cites ample authorities to sustain its position in that case.

The referee is not satisfied that the proposition of the learned counsel for the plaintiffs can be sustained—that the combination shown in this case is not illegal under the principles of common law. In determining the validity at common law of such combinations, and contracts which are essential parts of them, the true test is whether they afford fair and just protection to the parties, or whether they are so broad as to "interfere with the interests of the public." (*Morris* v. *Barclay*, 68 Pa., 173, 8 Am. Rep., 159; *Crawford* v. *Wick*, 18 Ohio St., 190; 98 Am. Dec., 103; *Bennett* v. *Dutton*, 10 N. H., 481; *White* v. *Hunter*, 23 N. H., 134; *Weld* v. *Lancaster*, 56 Me., 453.) Certainly the combination in this case was such as to seriously injure those who wished to buy crushed granite in the city of St. Louis and the neighboring markets.

It will be unnecessary to review the large number of other cases cited to show that these agreements were void at common law. The different devices adopted to suppress competition and to obtain a monopoly which have been declared void by the courts are many. They frequently took the form of selling agencies like the cases of *United States* v. *General Paper Company* (201 U. S., 117), *Slaughter* v. *Tucker Coal Company*, *Finck* v. *Schneider Granite Company*, *Pocahontas coal case*, and *Continental Wall Paper Co.* v. *Voight*, *supra*.

In the case of the *Morris Run Coal Company* v. *Barclay Coal Company* (68 Pa. St., 173) the agreement was to pool all the coal mined in a certain

district and divide the territory. In *Judd* v. *Harrington* the agreement was between certain brokers, dealing in sheep and lambs, in New York City, whereby they agreed to pool their commissions. In the case of *Fairbank* v. *Leary* (40 Wis., 637) a number of persons formed a copartnership, the same being kept secret and the parties ostensibly operating as separate concerns. It appeared that this was done for the purpose of suppressing competition and the court held it void. To the same effect was *Craft et al.* v. *McConoughy* (79 Ill., 346), cited and approved in the case of *Arnold & Company* v. *Jones Cotton Company* (44 So. Rep. Ala., p. 663 of opinion).

There are many other cases which we shall cite when we come to discuss the subject of corporate combinations, as distinguished from the trust agreement, which bear directly upon this case, and in which such corporate combinations are held void at common law. They tend irresistibly to the conclusion that the Standard Oil Trust was void at common law, being in unreasonable restraint of trade and tending to monopoly. No case can be cited, nor a well-established principle of common law invoked, to sustain this trust agreement. We have seen that this agreement and others similar in form have been declared void in the supreme court of Ohio, of New York, of Missouri, of Nebraska, and of Illinois. These cases have been many times cited and approved by this court and the circuit courts of the United States. They have become a part of the well-established law of the country.

A moment's consideration of the circumstances surrounding the enactment of the trust agreement will show beyond question that it was intended to combine all the leading manufacturers for the purpose of suppressing competition. Mr. Rockefeller and his associates started out with the determination to control the petroleum trade. Aided by enormous rebates and unfair contracts with railroads which crushed out their competitors, they started on their course, either acquiring and dismantling plants or combining them into one great aggregation. The first attempt was the acquisition of some eighteen or twenty plants in Cleveland and the execution of contracts with certain other plants to restrict their output and sphere of operation. Following this they entered Pennsylvania and the fields of New York, not openly, but secretly, making arrangements which the public suspected, but the real facts of which were never disclosed until Mr. Rockefeller and Mr. Archbold in the case at bar produced the contract of 1879. We have seen that the outrageous discriminations by railroads, as evidenced by the South Improvement contract, the contracts with the Pennsylvania road subsequently entered into, and the terminal contracts, aroused the highest indignation in Pennsylvania and Ohio; that they were the cause of great public gatherings in which these methods were bitterly denounced; that finally the Commonwealth of Pennsylvania caused Mr. Rockefeller and his associates to be indicted for conspiracy to obtain unlawful rebates and to prevent others than themselves from buying, refining, and

selling oil, and that suits were brought against the United Pipe Lines (controlled by the Standard Oil Company), and the Pennsylvania Railroad Company, to oust them from the State of Pennsylvania, on the same ground.

It is admitted by Mr. Rockefeller that competition between the refiners was strong during these periods, and it appears beyond question that the object of this combination was to crush out the competitors, which was so effectually done that in 1878 and 1879 nearly all the independent refineries had been driven out of business or had been bought and dismantled; Mr. Archbold admitted that at least 50 had been bought up and dismantled by the Standard interests. The others were in the Standard Oil combination, which the testimony shows was secret in its operations. Mr. Rockefeller, Mr. Rogers, Mr. Archbold, and Mr. Payne frequently testified in proceedings during those years that the Standard Oil Company did not directly or indirectly control or operate any of these refineries, intending undoubtedly to convey to the public mind that they were separately owned, controlled, and operated. It appears also that these refineries so entering this combination were the principal refineries in the country. Mr. Rogers testified on October 14, 1879, that "the people that are now working in harmony with us comprise, I should think, about 90 to 95 per cent of the refiners." He named the leading ones as "The Standard Oil Company, Charles Pratt & Company, the Sone & Fleming Manufacturing Company, Warden, Frew & Company of Philadelphia, the Stand-

ard Oil Company of Pittsburg, the Acme Oil Refining Company of Titusville, the Imperial Refining Company of Oil City, the Baltimore United Oil Company of Baltimore."

It appears by his testimony that he evaded the question as to what he meant by being in harmony, and neither he nor any of his associates in all of these examinations disclosed what this combination was. He testified, however, that the Standard Oil Company did not control his business; that he had no written agreement with the Standard Oil Company, but one of a personal nature with certain officers of the Standard Oil Company (vol. 6, p. 3202).

It also appears by the testimony of Mr. Archbold and Mr. Rockefeller that each and every one of these separate concerns which entered the trust through the transfer of their stocks was engaged in some branch of the manufacture, transportation, or sale of petroleum and its products in competition with each of the others, and that after the combination each of the concerns was operated by the officers and persons who had previously controlled them. No statement was made to the public of the acquisition or combination; there was no transfer of the property, no purchase of property in the ordinary course of business, but a gigantic combination, conceived by Mr. Rockefeller and his associates and secretly and ruthlessly carried out, taking competitors into the combination when it could be done advantageously; purchasing their property or crushing them out and dismantling their plants when combination was not advisable.

We venture to say that there never was a combination before the court bearing so many earmarks of oppression, suppression of competition, and monopoly as this Standard combination. The trust agreement of 1882 was a trust pure and simple. The stocks of the various corporations and limited partnerships were transferred to nine men who where authorized to control, through this stock ownership, all of the corporations and limited partnerships engaged in this business. By article 2, section 2, they were authorized "*to purchase bonds and stocks of other companies engaged in business similar or collateral to the business of said Standard Oil companies.*" It provided for the election of their successors by the registered holders of trust certificates, by vote in person or by proxy, one vote for each share, the majority of shares represented at each election to elect. It provided for annual and special meetings, the adoption of by-laws; for filling vacancies in the board; that the legal title of the stocks should be in the trustees and their successors; that the trustees were to receive and keep the dividends declared on the bonds and stocks so in their hands and distribute the same to the certificate holders; that the trustees were to exercise general supervision over the affairs of the corporations and partnerships whose stock was to be held in trust; to elect officers and directors thereof, and they might elect themselves to such positions; that a majority of the trustees were to control, with authority to employ agents and attorneys in the management of the business. The trustees did adopt by-laws which

were substantially the same as the by-laws subsequently adopted by the Standard Oil Company of New Jersey when it became the successor to the Trust.

If the lease of a competing cotton compress company in Oklahoma to the Gulf Company was void at common law as in unreasonable restraint of trade and tending to monopoly, why was not the amalgamation of the stocks of these competing concerns in the hands of trustees equally void as in restraint of trade and tending to monopoly? If we are looking at the degree of suppression of competition, no combination of modern times in that respect approaches the Standard Oil combination in all its forms. If we are looking to the evidences of oppression and unfair dealing, no combination is equal in its obnoxious features.

One thing clearly appears by all these authorities. It makes no difference at common law or under the statutes what form the combination takes. The question always is, does it really unreasonably restrain and suppress competition and tend to monopoly? It was held in the Paper Trust case, in the Pocahontas coal case, in the Slaughter Coal Company case, that where various separate concerns organized a selling company, each taking stock in proportion to the output, the selling company to be the exclusive selling agent or to purchase all the products of the different manufacturers, this was another means of controlling the market and suppressing competition. It was a more modern invention than the

Standard Oil Trust, and certainly less open in its features. If it was illegal, however, to control the sale of the products, is it not equally illegal to place the control of all the stocks of these companies in the hands of nine trustees during the life of the survivor and twenty-one years thereafter, whereby all the operations of these concerns could be controlled and competition entirely eliminated? It was said in the *Pocahontas Coal Case, supra*, that:

> The determination of the question whether or not a contract is in restraint of trade is to be arrived at in exactly the same way and under exactly the same rules whether the case falls under the provisions of the act of Congress or under the rules of the common law. The difference between the act and the common law does not lie in the manner of ascertaining whether or not restraint exists, but in the degree of restraint required to render the contract illegal.

Does anyone doubt that this trust agreement would be void under the Sherman Act? If it is simply a question of degree, the suppression of competition and the monopoly under the trust of 1882 was almost complete. This was not a purchase of properties; but even that would not change the situation. As Judge Taft said in the *Addyston Pipe case:*

> But in recent years, even the fact that the contract is one for the sale of property or of business and good will, or for the making of a partnership or a corporation, has not saved it from invalidity if it could be shown that it was

> only part of a plan to acquire all the property used in a business by one management with a view to establishing a monopoly. Such cases go a step further than those already considered. In them the actual intent to monopolize must appear.

He cited many cases for this position, notably *State* v. *Standard Oil Company* (49 Ohio St., 137), involving this very trust agreement; also the Nebraska, Illinois, Missouri, and New York cases involving trust agreements exactly like this.

Defendants claimed in the court below that the acquisitions of these stocks from 1872 to 1882 were in the nature of purchases of properties and plants in the usual course of business, and that the suppression of competition was only such as would be incident to a legal acquisition of property. We invite the court's careful attention to the testimony of Mr. Rockefeller and Mr. Archbold in this respect, and we would be willing to rest this case on that testimony alone. But many circumstances and conditions surrounding the business at that time point with irresistible force to the conclusion that the sole object in acquiring these stocks was to suppress competition and to obtain a monopoly. When questioned on direct examination, Mr. Rockefeller frequently speaks of having purchased the property of various of these concerns which entered the Trusts of 1879 and 1882, but on further examination and on cross-examination he squarely admits that in no instance was the property of any of these concerns purchased, but rather the stocks were acquired, and as the stocks were acquired

the list of the stockholders of the Standard Oil Company was increased to take in the principal persons from whom the stocks were thus acquired. It was but another ingenious scheme of exchanging stocks and of holding together all of the stockholders of these concerns. Would it make any difference to this case whether all of the stocks of these 39 corporations thus put together during these years were directly amalgamated in the hands of certain trustees, or were amalgamated in pursuance of a plan whereby each became a stockholder in the Standard Oil and each stockholder in the Standard Oil Company became a stockholder in the outside company? It is alleged in the petition that this latter was the scheme, and the testimony shows such to be the case. (Petition, vol. A, pp. 10–11.)

It appears that as to some of these corporations which afterwards went into the trust of 1882, the property at the time of the negotiation was owned by individuals or copartnerships, and as a part of the plan of combination they were organized into corporations and the stock of the corporations was acquired by the combination of 1879. This explains the tables and a large amount of Mr. Archbold's testimony, in which he says that these corporations were organized "by Standard Oil interests." They were organized by Standard Oil interests, but as a part of the combination and scheme to obtain an amalgamation of the stocks of all of the leading companies engaged in the business during these years.

We submit that the trust agreements of 1879 and 1882 were void at common law.

II.

THE CORPORATE COMBINATION OF 1899 WAS VOID UNDER THE SHERMAN ACT AS A COMBINATION IN RESTRAINT OF TRADE AND AS A MONOPOLY.

A discussion of the foregoing proposition necessarily involves the condition of the Trust at the time the corporate combination was made and the relation of the constituent companies to each other. We believe we have demonstrated that from the earliest date these various corporations were held together by trust agreements which were void at common law; but whether they were void or not is manifestly immaterial in view of the decisions of this court. The combination was a continuing one. There was no vested right by reason of the acquisition of these stocks by the trustees, and when the Sherman Act was passed the continuance of the combination became illegal.

United States v. *Freight Association*, 166 U. S., 290, cited and approved in *Waters-Pierce Co.* v. *Texas*, 212 U. S., 86.

Thomsen v. *Union Castle Steamship Co.*, 166 Fed., 251.

United States v. *Am. Tobacco Co.*, 164 Fed., 700.

Finck v. *Schneider Granite Co.*, 86 S. W., 221 of opinion.

Ford v. *Chicago Milk Assn.*, 155 Ill., 166.

In the *Waters-Pierce* case it appeared that the Supreme Court of Texas had excluded that corporation from the State and imposed a large fine, partly at least by reason of the fact that the Waters-Pierce Company was dominated and controlled in its business by the Standard Oil Company of New Jersey from the date of its permit to do business in the State, which was May 31, 1900, one of the objects of which control was to create a monopoly to control the price of petroleum and prevent competition in its sale in a large and specified territory, including the State of Texas. The Waters-Pierce Company, defendant in that case, is the same company defendant in this case. (*Waters-Pierce Co.* v. *Texas*, 177 U. S., p. 28.) After the old Waters-Pierce Company, the majority of whose stock was owned or controlled by the Standard Oil trustees, was ousted from the State of Texas, a new corporation was formed, a majority of whose stock was held in trust for the Standard Oil Company of New Jersey.

It was claimed in the Texas case that the antitrust act of the legislature of Texas was given a retroactive effect and made to apply to this company because of agreements of the old company for division of territory, which were carried out by the Waters-Pierce Company. The court said (pp. 107–8):

> It is contended that the acts in this case were given a retroactive effect in violation of the Federal Constitution (art. 1, sec. 10). This argument is predicated largely upon the contention that the conviction in this case

was because of the old agreement of the former Waters-Pierce Oil Company, made long before the passage of the present statute, at a time when it was legal, and before the creation of the defendant company. But in view of the facts found in the state court, to which we have already referred, there was ground for conviction, not because of the making of the old agreement for the division of the territory and the suppression of competition while the old company was in existence, but because the new company was found to have carried out the old agreement and made itself a party thereto, and by continuing the old arrangement after the passage of the law, had brought itself within its terms. Of a similar contention this court said in *Trans-Missouri Traffic Association case* (166 U. S., 290):

"It is said that to grant the injunction prayed for in this case is to give the statute a retroactive effect. That the contract at the time it was entered into was not prohibited or declared illegal by the statute, as it had not then been passed; and to now enjoin the doing of an act which was legal at the time it was done would be improper. We give to the law no retroactive effect. The agreement in question is a continuing one. The parties to it adopt certain machinery, and agree to certain methods for the purpose of establishing and maintaining in the future reasonable rates for transportation. Assuming such action to have been legal at the time the agreement was first entered into, the continuation of the agreement, after it had been declared to be illegal, becomes a

> violation of the act. The statute prohibits the continuing or entering into such an agreement for the future, and if the agreement be continued it then becomes a violation of the act."

These cases are conclusive of the proposition that, the combination being a continuing one, the passage of the Sherman Act immediately rendered it invalid. But it is not very material whether this was so or not. The defendants voluntarily dissolved the Standard Oil Trust, segregated all of these corporations, and thereafter combined them again in the Standard Oil Company of New Jersey.

We now wish to call the court's attention to the facts leading up to this last combination. The Supreme Court of New York at the November term, 1889, had held the Sugar Trust agreement void as creating a monopoly. This was followed by the decision of the Supreme Court of Nebraska in May, 1890, holding the Distilling and Cattle Feeding Trust void upon the same ground. On March 2, 1892, the decision and judgment was rendered in the Supreme Court of Ohio in the Standard Oil case. On the 21st of March, 1892, the certificate holders met in New York and passed a resolution (Brief, *ante*, p. 55) providing that the Standard Oil Trust agreement of January 2, 1882, and the supplement thereto, dated January 4, 1882, "be, and are hereby, terminated this 21st day of March, 1892." The resolution then provides for the appointment of a committee to wind up the affairs and distribute all of the stocks held by the trustees to the owners of the trust certificates in pro-

portion to the respective equitable interests of the said owners in the stock so held as evidenced by the trust certificates, etc.

Mr. Archbold and Mr. Rockefeller swore that this trust agreement was terminated and the trust dissolved in obedience to the decree of the Supreme Court of Ohio holding it void. (J. D. Rockefeller, vol. 16, pp. 3184, 3185; Archbold, vol. 17, p. 3385.) Mr. Archbold wobbled a little, but in substance he testified that the dissolution took place absolutely for the purpose of complying with the decree of the Supreme Court of Ohio. Mr. Rockefeller testified that after the dissolution each of the corporations was controlled by its own stockholders, engaged in its own branch of the business of purchasing, refining, transporting, and selling oil, and that they were each competing with the other. (Rec., vol. 16, 3190 et seq.) It appears that when this dissolution took place there were several thousand trust certificate holders (Archbold, vol. 17, p. 3386; Rockefeller, vol. 16, p. 3186); that the large owners, to be sure, were these defendants, who were the majority of the liquidating trustees, and that the liquidating trustees immediately converted the trust certificates which they personally owned into the stock of the subcompanies, and during the seven years from 1892 to 1899 they were thus enabled to control these subcompanies by voting their stock. The larger number of the 2,000 or 3,000 certificate holders, not having converted their certificates into stock, did not vote. In

1897 the attorney-general of Ohio started a proceeding in the Ohio Supreme Court by filling a petition in the quo warranto case heretofore referred to, charging the Standard Oil Company and its officials with contempt of court because it had failed to withdraw from the trust agreement, which had been declared to be invalid. In that proceeding Mr. Rockefeller and his associates, as will appear, took the position that the trust had been absolutely dissolved; that the corporations had been segregated to their separate control by their own stockholders; that each corporation was pursuing its own business, governed by its own stockholders and board of directors and competing with each other in business. Mr. Rockefeller swore to this in that case, as it will appear in the record introduced in the case at bar. When asked on cross-examination if he did so testify he admitted it (vol. 16, p. 3190, 3191). The substance of that testimony was that each of the constituent companies was competing with all the others; that they were controlled by their own stockholders and not by the trust; they did not report to 26 Broadway (vol. 16, pp. 3191, 3192).

We have heretofore (p. 54) shown how this elaborate scheme of dissolution was carried out in order to dissolve the trust and yet to hold the companies together, but they did actually dissolve the trust and did segregate the companies. The defendants have testified they did so. They procured the dismissal of the case for contempt in the Supreme Court of Ohio on the ground that they had in good

faith carried out the dissolution and that the trustees had no control over the companies. The condition was, therefore, that each of these separate companies was in fact equitably owned by two or three thousand stockholders, the majority of the stock, of course, being owned in all the companies by twelve or fifteen men and their immediate associates. The defendants are in no position to claim that there was not a dissolution and that the Standard Oil combination was but a continuance of a previous amalgamation which was legal when it was made.

Daniels v. *Tearney* (102 U. S., 415).
Hamilton v. *Zimmerman* (37 Tenn., 47).
Grand Rapids & Indiana Ry. Co. v. *Osborn* (193 U. S., 17).
Electric Co. v. *Dun* (166 U. S., 489).
San Diego Land & Town Co. v. *City* (74 Fed., 79).
Fedelia Pitkin v. *City of Springfield* (112 Mass., 509).
People v. *Murray* (5 Hill, 468).

In the case of *Daniels* v. *Tearney* (102 U. S., 415) it appeared that, the ordinance of secession having been passed by the convention of Virginia, another ordinance was passed to provide against the sacrifice of property and to suspend proceedings in certain cases. Pursuant to this ordinance a bond was given to suspend the collection of a debt. Suit having been brought upon the bond, the Supreme Court of the United States held that although the ordinance of secession was void the parties were estopped to deny the validity of the ordinance and of the bond.

In *Hamilton* v. *Zimmerman* (37 Tenn., p. 48) it was said:

> This doctrine is said to have its foundation in the obligation under which every man is placed to speak and act, according to the truth of the case; and in the policy of the law to suppress the mischiefs from the destruction of all confidence in the intercourse and dealings of men, if they were allowed to deny that, which by their solemn and deliberate acts they have declared to be true.

To be sure, just prior to the dissolution (on April 1, 1892, and in contemplation of the dissolution), it appears that the stock of a large number of the companies, which was held and controlled by the Standard Oil trustees, was transferred to the Standard Oil Company of New Jersey, to wit: 23 separate companies (Brief, *ante*, p. 56), and that the stock of various other companies was transferred to the Standard of New York or other of the 20 companies remaining in the trust, so that the 20 companies remaining constituted all of the separate companies engaged in the oil business which were controlled by the trust, and these companies by stock ownership controlled the balance. The 20 companies are the principal companies to-day engaged in this business. This, however, was a part of the scheme of dissolution, and was after the passage of the Sherman Act.

The institution of the contempt proceedings in 1897 and of a second suit by the attorney-general of Ohio against the Buckeye Pipe Line, one of the constituent companies, on November 3, 1898, undoubt-

edly stimulated the formation of the last combination. The present Standard Oil Company was organized by increasing the capital stock of the Standard Oil Company of New Jersey; and the stock of all the balance of the 20 companies was turned over by the stockholders thereof to the Standard Oil Company of New Jersey, for which it issued its corporate certificates. It appears, therefore, that the Standard Oil Company of New Jersey became the trustee, holding the stock of these constituent companies in exactly the same manner as the trustees held them, and whatever illegality may have originally attached also attached to the acquisition by the Standard Oil Company of New Jersey; and, in addition thereto, it was a new combination formed to take the place of one declared void and which was dissolved pursuant to the decree of the court, intending to evade that decree and to substitute one combination for another in order to continue the grip upon the commerce of the country. What distinction can there be between the control of the subsidiary corporations by the trust certificate holders through the trustees and the control of the subsidiary corporations by the stockholders of the Standard Oil Company through its board of directors? The points of similarity are numerous and obvious. Some of them may be briefly summarized as follows:

(*a*) The powers of the trustees and the powers of the Standard Oil Company over the subsidiary corporations were the same.

(*b*) The Trust and the principal corporation owned and controlled the stocks of all the subsidiary corporations.

(*c*) Each had power to organize additional corporations and to acquire the stocks and bonds of other corporations engaged in like business.

(*d*) Each had the power to consolidate the property and assets of any of the corporations the stocks of which they held.

(*e*) Each issued certificates of shares, one called trustees' certificates and the other called stock certificates.

(*f*) The owners of such certificates voted for the election of trustees under the trust agreement and for the election of directors under the corporate organization.

(*g*) Vacancies in the board of directors and vacancies in the board of trustees were filled in the same manner.

(*h*) Each elected the boards of directors of the subsidiary corporations; controlled them; managed them; directed their policies; and such ownership and control necessarily removed all inducement to competition.

(*i*) Each adopted by-laws substantially similar, providing for the election of trustees and directors, president, secretary, treasurer, executive committe; and providing for the manner of voting by person or by proxy.

(*j*) Each had a system of registration and transfer of certificates, the trust certificates being handled exactly like stock certificates.

(*k*) The majority of the trustees constituted a quorum to transact business; the majority of the directors of the corporation did likewise.

The trust was declared void as in restraint and monopolization of commerce; the corporation took its place and continues identically the same business, exercising the same control, and restraining and monopolizing commerce in exactly the same manner. And the same men controlled each. In effect it was the same conspiracy. In fact, except by the exchange of the corporation certificates for the trustees' certificates upon the markets, the world knew no difference.

This combination was void under the Sherman Act and as a monopoly.

United States v. *Northern Securities Co.*, 193 U. S., 197.

United States v. *American Tobacco Co.*, 164 Fed., 700.

Shawnee Compress Co. v. *Anderson*, 209 U. S., 423.

Swift & Co. v. *United States*, 196 U. S., 375.

Loewe v. *Lawlor*, 208 U. S., 274.

Continental Wall Paper Co. v. *Voight*, 148 Fed., 939, 212 U. S., 227.

Bigelow v. *Calumet & Hecla Mng. Co.*, 155 Fed., 869.

Burrows v. *Inter. Met. Co.*, 156 Fed., 389.

Penn. Sugar Ref'ng Co. v. *Am. Sugar Ref'ng Co.*, Court of Appeals, Second Circuit, 166 Fed., 254, reversing 160 Fed., 114.

Noyes on Incorporate Relations, secs. 331, 332, 383.

Eddy on Combinations, chaps. 15, 16, and 18, secs. 606 and 607.

Montague & Co. v. *Lowry*, 193 U. S., 38.

Harriman v. *Northern Securities Co.*, 197 U. S., 244.

Distilling and Cattle Feeding Co. v. *People*, 156 Ill., 448.

People v. *Chicago Gas Trust Co.*, 130 Ill., 268.

Harding v. *Am. Glucose Co.*, 55 N. E., 577.

Dunbar v. *Am. Teleph. and Telegr. Co.*, 79 N. E., 427.

National Lead Co. v. *Grote Paint Co.*, 80 Mo. App., 247.

Richardson v. *Buhl*, 77 Mich., 632.

American Biscuit Co. v. *Klotz*, 44 Fed., 721.

Addyston Pipe and Steel Co. v. *United States*, 175 U. S., 211; s. c. 85 Fed., 271.

National Harrow Co. v. *Hench*, 76 Fed., 667.

National Harrow Co. v. *Hench*, 83 Fed., 36.

Bement v. *Nat. Harrow Co.*, 186 U. S., 70.

Merz Capsule Co. v. *United States Capsule Co.*, 67 Fed., 414.

Under the doctrines laid down in the foregoing authorities, the following propositions are established:

(*a*) That the defendants are engaged in interstate commerce.

(*b*) That the amalgamation of the stocks of all these companies in 1899 in the Standard Oil Com-

pany of New Jersey as a holding corporation was a combination in restraint of trade within section 1 of the Sherman Act.

(c) That the control of the commerce in petroleum and its products by the Standard Oil Company of New Jersey through its various subsidiary corporations constitutes a monopoly within section 2 of the Sherman Act.

(a) THAT THE DEFENDANTS ARE ENGAGED IN INTERSTATE COMMERCE.

U. S. v. *Swift & Co.*, 196 U. S., 375.
U. S. v. *American Tobacco Co.*, 164 Fed., 700.
Shawnee Compress Co. v. *Anderson*, 209 U. S., 423.
Loewe v. *Lawlor*, 208 U. S., 274.

The foregoing cases are conclusive of this proposition. Little discussion is needed to illustrate them. It appears that the Standard Oil Company, through its various subsidiary corporations, is engaged in producing and purchasing crude petroleum in Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Oklahoma, and Kansas; in transporting the same by pipe line from the States in which the same is produced into the various other States to the manufactories of the various defendants; in manufacturing the same into the products of petroleum; in transporting those products, largely in the tank cars of the Union Tank Line Company (controlled by the Standard Oil Company of New Jersey) to the various marketing places throughout the United States, and in selling and

disposing of the same there. This much stands admitted.

The defendants, however, make some point that the sale of the products, particularly refined oil and gasoline, in the various States is not interstate commerce, because the refined oil and gasoline are, for the most part, first unloaded into tanks at various towns within each State, and thence distributed to retail dealers and consumers mostly by tank wagon, and that, after being so unloaded into such tanks at the local stations, it does not again cross a state line except in very small quantities. The fact is, however, that except in 13 States (Texas, California, Colorado, Kansas, Missouri, Illinois, Indiana, Ohio, Pennsylvania, West Virginia, Maryland, New York, and New Jersey) where the Standard has refineries, all the refined oil and gasoline which it sells in each State is first transported into that State from some other State, remaining the property of the Standard Oil Company during such transportation and until sold. Moreover, it appears that even in the 13 States named the Standard sells a great deal of oil which it ships thither from other States. Most of the lubricating oil which it manufactures and sells to railroads throughout the United States is manufactured at Franklin, Pa. It also appears that a large percentage of the oil manufactured by the defendants is exported.

We submit that the business of the Standard Oil Company and its subsidiary companies is one unit, and that as a whole, and therefore in every part, it

constitutes interstate and international commerce. The authorities are clear on this point.

In *Swift* v. *United States* the defendants were engaged in purchasing cattle at the various marketing places, Kansas City, St. Joseph, Omaha, and Chicago; in killing these cattle; in transporting the products to their various stations throughout the United States and selling the same at wholesale and retail. The court held that this was interstate commerce. (Opin. 196 U. S., 399, 400.) The court held, moreover, that sales by persons in one State to persons in another constituted interstate commerce.

In *Loewe* v. *Lawlor*, the plaintiffs manufactured hats in the State of Connecticut and sold them in other States. The defendants, members of a labor organization, were not engaged in interstate commerce, but were attempting to boycott the trade in hats made by the plaintiff manufacturers. The court held this to constitute an obstruction of interstate commerce.

In *Caldwell* v. *North Carolina* (187 U. S., 622, 632) the court said:

> Transactions between manufacturing companies in one State, through agents, with citizens of another constitute a large part of interstate commerce.

In *United States* v. *American Tobacco Co., supra*, the court held that the purchase by defendants of leaf tobacco and the shipment thereof by means of common carriers to factories or warehouses in the other States; the manufacture thereof by its subsidiary corporations, and the sale thereof throughout the United

States and in foreign countries, constituted interstate commerce, although the defendants themselves were not engaged in transportation. (Opin. of Judge Noyes, 164 Fed., 712, 713.)

In *Robbins* v. *Shelby Taxing District*, the court held (120 U. S., 489, 497):

> The negotiations of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made, is interstate commerce.

The case at bar is much stronger than the Tobacco case because the defendants are themselves common carriers. They admit that in the States of Ohio, Pennsylvania, and New York they are common carriers by pipe line. The law of Congress requires them to act as common carriers everywhere. They transport the greater part of their refined oils, gasolines, and lubricating oils in their own tank-line cars, and have arrangements with railroads to allow them a mileage upon their cars. Whether these tank cars are common carriers is immaterial. The defendants are clearly engaged in commerce between the States, and more than 90 per cent of their business is interstate or foreign business. They purchase the oil at the wells in a few States; they own and control the product in every state of transition until it reaches the retail dealer or consumer throughout every town, village, and community of the United States. If this commerce is not interstate, over which Congress, and consequently the federal courts, have control, there is

no such thing as control by Congress of interstate commerce except in respect to common carriers.

(b) THAT THE AMALGAMATION OF THE STOCKS OF ALL THESE COMPANIES IN 1899 IN THE STANDARD OIL COMPANY OF NEW JERSEY AS A HOLDING CORPORATION WAS A COMBINATION IN RESTRAINT OF TRADE WITHIN SECTION ONE OF THE SHERMAN ACT.

The authorities above cited establish the propositions that the Standard Oil Trust was in unreasonable restraint of trade, tended to monopoly, and was void at common law; that it was a continuing combination or trust, and, after the passage of the Sherman Act, inhibited by the provisions thereof; that, in obedience to the decision of the supreme court of Ohio, it was dissolved and the stocks of the various companies distributed so that there were 2,000 or 3,000 stockholders in each of the various subsidiary corporations of the Trust, and that therefore when in 1899 these companies were combined in the Standard Oil Company of New Jersey there was a new combination. This history is also important as showing the growth and development of the Standard Oil combination now in existence, and evidences the intent with which the latter corporation was organized.

We now desire to consider whether the present Standard Oil combination is in violation of the anti-trust act.

For a full understanding of this statute resort must be had to the history of the times in which it was

passed. In construing statutes the court will consider the previous condition of the commerce of the country and the political and social conditions against which the remedial statute is directed.

> But courts, in construing a statute, may with propriety recur to the history of the times when it was passed; and this is frequently necessary in order to ascertain the reasons as well as the meaning of particular provisions in it. (*United States* v. *Union Pacific Railroad Co.*, 91 U. S., 79.)

At the time of the passage of this act there were certain combinations of capital which the people believed approached such a degree of monopoly as to threaten the industrial independence of the country. Conspicuous among these combinations were the very ones referred to in this case—the Standard Oil combination, then in the form of a trust, the Sugar Trust, the Whisky Trust, and various others. A most thorough investigation had taken place by the Hepburn committee of the New York legislature in 1879, and another was also made later in 1888 by the New York Senate Committee, and in the same year an investigation by the Committee on Manufactures of the Fiftieth Congress.

The investigation by the committee of the Senate preceding the enactment of the interstate commerce act also brought to light many of the commercial conditions surrounding these corporations, and particularly in their connection with railways. There was a widespread feeling that these corporations and com-

binations were inimical to the best interests of the country, and Congress undertook in the Sherman Act not only to prevent contracts between independent industrial corporations to control prices, to suppress competition, to regulate supply, etc., but to prevent the combination of corporations by stock ownership, either in the form of a trust, as was then understood, or of a holding corporation, and to prevent monopolies, whether accomplished in the manner designated in the first section or accomplished by a single aggregation of wealth in a corporation.

The discussions in the Senate and House of Representatives clearly indicate the existence of these trusts, the evils to be remedied, and the scope and effect the act was intended to have. (Speech of Senator Sherman, Cong. Rec., vol. 21, pt. 3, pp. 2456, 2457, 2459, and 2460; Teller, 2562; Edmunds, 2726, 2728, 2791; Eustis, 2645; Hoar, 2728; Representative Culberson, vol. 21, pt. 5, p. 4089; Wilson, 4093; Taylor, 4098; Heard, 4101; Morse, vol. 21, pt. 6, p. 5954; and many other Senators and Representatives.)

It appears by these discussions that the principal companies then known and against which the legislation was directed were the Standard Oil Trust, the Cotton Trust, the Whisky Trust, the Sugar Refiners' Trust, the Cotton Bagging Trust, and the Copper Trust. (166 U. S., 319.)

Senator Sherman cited cases where the Standard Oil Company had undertaken to crush out its com-

petitors. He described the nature of the combinations, as he did also the other similar combinations and holding companies. Among other things, he said:

> But associated enterprise and capital are not satisfied with partnerships and corporations competing with each other, and have invented a new form of combination, commonly called trusts, that seeks to avoid competition by combining the controlling corporations, partnerships, and individuals engaged in the same business, and placing the power and property of the combination under the government of a few individuals, and often under the control of a single man called a trustee, a chairman, or a president. (Cong. Rec., vol. 21, part 3, p. 2457.)

Again, after citing authorities to show that these combinations were void at common law, including many cases cited in this brief, notably the Sugar Trust case in New York (Cong. Rec., vol. 21, part 3, p. 2457), the distinguished Senator said (p. 2459):

> I might add to the cases cited innumerable cases in nearly all of the States and in England, and in all of them it will appear that while the law in respect to contracts in restraint of trade and combinations to prevent competition and to advance the price of necessaries of life has varied somewhat, but in all of them, whether the combinations are by individuals, partnerships, or corporations, when the purpose of the combination or its plain tendency is to prevent competition, the

courts have enforced the rule of the common law and have vigorously used the judicial power in subverting them.

And now it is for Congress to say, when the devices of able lawyers and the cupidity of powerful corporations have united to spread these combinations over all the States of the Union, embracing in their folds nearly every necessary of life, whether it is not time to invoke the judicial power conferred upon the courts of the United States to deal with these combinations; when lawful to support them and when unlawful to suppress them.

I might state the case of all the combinations which now control the transportation and sale of nearly all the leading productions of the country that have recently been made familiar by the public press, *such as the cotton trust, the whisky trust, the sugar-refiners' trust, the cotton-bagging trust, the copper trust, the salt trust, and many others, some of which have been the subjects of legislative inquiry and others of judicial process;* but it is scarcely necessary to do so, as they are all modeled upon the same plan and involve the same principles. They are all combinations of corporations and individuals of many States forming a league and covenant, under the control of trustees with power to suspend the production of some and enlarge the production of others, and absolutely control the supply of the article which they produce, and with a uniform design to prevent competition, to break it down wherever it appears to threaten their interest.

I have seen within a few days in the public prints a notice of a combination intended to affect the price of silver bullion, as follows:

WITH A CAPITAL OF TWENTY-FIVE MILLION DOLLARS.

"CHICAGO, *March 2.*

"The Herald to-day says that, with the exception of five companies, all the refining and smelting companies of the United States have formed a trust, with a capital of $25,000,000, of which $15,000,000 is to be common stock and the remaining preferred."

If such a combination is formed it will enable a few corporations in different States to corner the Government of the United States in its proposed effort, by a bill pending in the Senate, to purchase silver bullion as the basis and security for paper money. Can anyone doubt that such a combination is unlawful, against public policy, with power enough to control the operation of your laws, and destructive to all competition which you invite? It is scarcely necessary on this point to quote further from law books. Every decision or treatise on the law of contracts agrees in denouncing such a combination.

On page 2570 Senator Sherman said further:

So with the other combinations. I do not wish to single out the Standard Oil Company, which is a great and powerful corporation, composed in great part of citizens of my own State, and some of the very best men I know of. Still, they are controlling and can control the market as absolutely as they choose to do

> it; it is a question of their will. The point for us to consider is whether, on the whole, it is safe in this country to leave the production of property, the transportation of our whole country, to depend upon the will of a few men sitting at their council board in the city of New York, for there the whole machine is operated. I do not say anything against these men. Many of them are my personal friends and acquaintances. I only refer to them because they are the oldest of these combinations founded upon contracts which have been copied by the other combinations.

Senator Edmunds, after mentioning the Standard Oil and the Sugar trusts, said (Cong. Rec., Vol. 21, Part 3, p. 2726):

> I am in favor, most earnestly in favor, of doing everything that the Constitution of the United States has given Congress power to do, to repress and break up and destroy forever the monopolies of that character, because in the long run, however seductive they may appear in lowering prices to the consumer for the time being, all human experience and all human philosophy have proved that they are destructive of the public welfare and come to be tyrannies, grinding tyrannies, that have sometimes, in other countries, produced riots, just riots in the moral sense.

Mr. Wilson, of West Virginia (Cong. Rec., vol. 21, part 5, pp. 4092–4093), said:

> Now, Mr. Speaker, in order to legislate effectively against trusts, this House ought to know exactly what a trust is, its structure and

mode of operation and the conditions that produce or make possible a successful trust.

In general terms, we all know that a trust is the latest and most perfect form of combination among competing producers to control the supply of their product, in order that they may dictate the terms on which they shall sell in the market and may secure release from the stress of competition among themselves. From the very beginning of trade perhaps, certainly in all its known history, there have been various forms of combination, and we have long been familiar with them in this country under the name of pools, corners, combines, and the like. These have awakened the distrust and anger of the people, but never the same uneasiness and resentment as have been kindled by these so-called trusts.

If I may use an illustration that seems to me an apt and expressive one, I would say that the trust bears the same relation to all previous modes of combination in trade that the Government of the United States under the Constitution bears to the Government of the United States under the Articles of Confederation. A combination or pool is a voluntary association depending upon the good faith of the parties associating and carrying with it those elements of weakness and disintegration that necessarily belong to a voluntary association. A trust is a legal consolidation of properties, a legal concentration of control.

Historically it grew out of the greatness and the necessities of the Standard Oil combination. When that combination in its triumphal

progress found itself practically the sole producer of refined oil in this country, it had its properties in many States, vested in and controlled, as the case might be, by corporations, partnerships, and individually, and including many separate lines of business. It had its refineries, its pipe lines, its terminal facilities, its manufactures of barrels and cans and lamp-wicks and other articles.

It became necessary that all these scattered properties and all these different kinds of business should be brought under some simple and effectual central control.

Accordingly the able solicitor of the Standard alliance worked out for that alliance the trust scheme of combination, which has subsequently swept over the field of American industry and has been adopted, with greater or less success, by so many other would-be monopolies.

* * * * *

Now, Mr. Speaker, I shall not go into an examination or discussion of individual trusts. I have said this much only to show that the common basis of trusts is the corporation. The deed under which the Sugar Trust was organized required that all the refineries should first become corporations and that all subsequent applicants for admission should qualify themselves in like manner. Indeed, it may be affirmed that no permanent trust can be built on a less solid basis. Combinations very effective for some temporary purpose or within a limited area may be formed by individuals or partnership, but they will be

subject to all the contingencies of death, bankruptcy, bad faith, and voluntary withdrawal.

Those which are to become a menace to the public can not be built upon a foundation so shifting. Moreover, Mr. Speaker, we all know that the individual has disappeared in the corporation, which alone offers the aggregation of means, the exemption from physical death, and the unity of control that are indispensable for the gigantic enterprises of modern production and trade.

It appears, therefore, that Congress had in mind these identical conspiracies, combinations, and large corporations like the Standard Oil and others, and when it inhibited any combination in the form of a trust *or otherwise* it was intended to include the holding together of corporations engaged in the various industries all over the country. This bill was not hastily or inconsiderately passed. It received long and careful consideration by eminent statesmen and lawyers in the light of what was supposed to be the great threatening evil to the industries of this country. It can not be possible, after this careful consideration, that Congress was legislating merely against the trust form of combination and not against the corporate holding company or form of combination. Congress perfectly understood the evil and intended to prohibit it. It does not militate against this that for many years after the passage of this act the Standard Oil Company was allowed to go on and monopolize commerce. It is frequently the case in a representative government that after agitation result-

ing in the passage of a statute against a particular evil the public becomes satisfied and the enforcement is postponed. Mr. Justice Harlan in the Northern Securities case said:

> It may well be assumed that Congress, when enacting that statute, shared the general apprehension that a few powerful corporations or combinations sought to obtain, and unless restrained would obtain, such absolute control of the entire trade and commerce of the country as would be detrimental to the general welfare.

CONSIDERATION OF AUTHORITIES.

We believe that the Northern Securities case and the other authorities cited by us under this head are conclusive of the proposition that this is a combination in restraint of trade. We shall not, of course, review at length all of these cases, but content ourselves with pointing out their salient features and application to the case at bar.

Certain propositions were laid down in the Northern Securities case by Mr. Justice Harlan (p. 331):

> That *every* combination or conspiracy which would extinguish competition between otherwise competing railroads engaged in *interstate trade or commerce*, and which would *in that way* restrain *such* trade or commerce, is made illegal by the act;
>
> That the natural effect of competition is to increase commerce, and an agreement whose direct effect is to prevent this play of competition restrains instead of promotes trade and commerce;

> That to vitiate a combination such as the act of Congress condemns it need not be shown that the combination in fact results, or will result, in a total suppression of trade or in a complete monopoly, but it is only essential to show that by its necessary operation it tends to restrain interstate or international trade or commerce, or tends to create a monopoly in such trade or commerce and to deprive the public of the advantages that flow from free competition.

In stating the contention of the Government, that Congress had power to protect the freedom of interstate commerce by any means which were appropriate, which was sustained in this case, it was said:

> It does contend that no state corporation can stand in the way of the enforcement of the national will, legally expressed. What the Government particularly complains of—indeed, all that it complains of here—is the existence of a combination among the stockholders of competing railroad companies which, in violation of the act of Congress, restrains interstate and international commerce through the agency of a common corporate trustee designated to act for both companies in repressing free competition between them. (P. 335.)

* * * * *

Again, the court held (p. 347) that—

> No device in evasion of its provisions, however skillfully such device may have been contrived, and no combination, by whomso-

> ever formed, is beyond the reach of the supreme law of the land, if such device or combination by its operation directly restrains commerce among the States or with foreign nations in violation of the act of Congress.

And again, quoting from the Joint Traffic case, the court said (p. 338):

> It is the combination of these large and powerful corporations, covering vast sections of territory and influencing trade throughout the whole extent thereof, and acting *as one body* in all the matters over which the combination extends, that constitutes the alleged evil, and in regard to which, *so far as the combination operates upon and restrains interstate commerce*, Congress has power to legislate and to prohibit.

These are the leading features of this opinion, upon which the courts have based the decisions and decrees that have effectuated the Sherman Act and made it a potent statute rather than a dead letter. This decision has not been applied to railroads alone. The language applies to all corporations; to all restraints of interstate commerce which tend to lessen competition; to every device, however skillfully contrived.

Let us now apply this decision to the case at bar. It will be claimed that these corporations were not at the time of the corporate combination in 1899 competing with each other, but the stocks of these companies were mutually owned by the same men who controlled the trust prior to the enactment of

the Sherman Act. Does this make any difference? If they were not competing it was because of an unlawful combination in the form of the Trust, or, during the liquidation period, because of the conspiracy of the individual stockholders. We have seen that this trust was void. Certainly the conspiracy between the stockholders of these subsidiary corporations was directly inhibited by the Sherman Act. During the seven years from 1892 to 1899 the stock of these subsidiary corporations was owned or equitably owned by the 2,000 or 3,000 certificate holders of the Standard Oil Trust.

The corporations, to be sure, were controlled by fifteen or twenty men who owned the controlling interest in all of them, although the large body of the stockholders constituted two or three thousand in number. In this respect the case does not differ from the Northern Securities case. It appears in that case that a few men controlled both roads. Messrs. Hill, Morgan, and Harriman, with a few associates of Mr. Hill's, owned the controlling interest in both of these railroads. It also appears in that case that at the time of the combination in the Northern Securities Company there was no competition between the lines; they were being operated in harmony. In fact, that was one of the claims in the Northern Securities case, but the corporations were potentially competing companies. Does it make any difference that Hill, Harriman, Morgan, Kennedy, and others of their associates did not own an equal amount of stock in each railroad? Suppose that it

had appeared that Messrs. Hill, Morgan, Harriman, and fifteen or twenty of their associates and some two or three thousand smaller stockholders had owned an equal amount of stock in the Northern Pacific and Great Northern (as they did after the dissolution of the Securities Company); that these men, by reason of various understandings between themselves, had operated the roads in harmony without competition and thereby they had monopolized the transportation between the Mississippi River and the Pacific Ocean, would the community of ownership give these men a right to combine all of their stocks in a corporation having perpetual power, thereby removing all possible hope of segregation through the disruption of their friendly understandings, death, or sale of their interests? In our opinion, the previous acting in harmony between the individual owners would be as much inhibited by the Sherman antitrust act as control by the corporation, but whether this is so or not there is a great difference between the ownership of stock in two corporations by a large number of individuals and the perpetual control thereof by a single corporate entity. (Mr. Justice Brewer, Northern Securities case, 193 U. S., p. 361.) "There is a potency in numbers, when combined, which the law can not overlook, where injury is the consequence." (Northern Securities case, 193 U. S., p. 340.)

The fact is that during all the years preceding this corporate combination in the Standard Oil Company of New Jersey, by one device or another, these

separate concerns were held together as a great combination; they were segregated pursuant to the decree of the court in obedience to the laws of the land. Does it make any difference that Rockefeller and his associates had organized some of these corporations and not purchased them? That they had constructed some of the refineries controlled by the subsidiary corporations? That they had changed the ownership of some of the properties from one corporation to another or from individual to corporate control? Most of the corporations had been obtained by stock ownership and held together by concerted action of a large number of stockholders.

It will probably be claimed that these individuals had purchased the stocks of these companies one after another, and that therefore whatever restraint there was in the combination was merely that which was incident to the purchase and acquisition of property.

Call it a purchase, an exchange of stocks, exercised under the laws of the State of New Jersey, or what you please, the object to be accomplished, and which has been accomplished, was the same as in the Northern Securities case, where the various stockholders sold or exchanged their stock for the stock of the Northern Securities Company. The same defense was made in that case. It was contended that that was a purchase of securities, authorized by the laws of New Jersey; that it was not interstate commerce; that the antitrust act only referred to those direct restraints upon interstate commerce which arose by reason of contracts

between railway companies tending to suppress the freedom of competition, and not to restraints which were incident to the ownership of shares of stock in each of the lines. Here it is likewise claimed that the antitrust act refers only to those direct restraints upon trade and commerce which arise from contracts between separate, individual manufacturers and dealers, and not to restraints which are incidental to the acquisition of shares of stock and the ownership thereof in competing manufacturing or transportation companies engaged in the same branch of business. It is only necessary to refer the court to the very able briefs of counsel in that case and to the opinion of the court and the dissenting opinions to show that this was the controlling point. (See brief of Mr. Johnson, p. 34 et seq.; brief of Mr. Grover, p. 125 et seq.; brief of Mr. Bunn, p. 22 et seq., nearly all of which was upon this point.)

It was argued by counsel that there was no distinction in the act between the suppression of competition between commercial companies and railroad companies, and many instances were cited to show that the act could not have been intended to inhibit the restraint of trade which is incidental to the purchase of property. (See especially the brief of Mr. Bunn, pp. 24–25.) The court, however, held that the inhibitions of the Sherman Act were not limited to those direct restraints upon trade and commerce evidenced by contracts between independent lines of railway to fix rates or to maintain rates, or manufacturing or other corporations to limit, supply, or control prices;

that the power of suppression of competition, and therefore of restraint of trade, exercised or which could be exercised by reason of stock ownership and control of the various corporations was as much in violation of the antitrust act as this direct restraint mentioned by counsel. There is nothing in the act which can be construed to prohibit the suppression of competition by reason of the stock control of railways, and to permit it in manufacturing industries, pipe-line companies, or car-line companies engaged in the manufacture and transportation of oil. It is our contention, therefore, that the contracts, combinations in the form of trusts or otherwise, or conspiracies in restraint of trade which are inhibited by the first section of the act, as applied to these classes of corporations, can not be distinguished from those contracts, combinations in the form of trusts or otherwise, or conspiracies in restraint of trade when applied to railway companies.

The thing inhibited is the restraint of interstate commerce, the thing to be accomplished is *the maintenance of the freedom of trade*. The inhibition against the suppression of competition by any instrumentality, scheme, plan, or device to evade the act applies to all corporations and all devices. The real point is, not the instrumentality or the scheme used to suppress the competition, but whether competition is thus suppressed and trade restrained and monopolized. The very learned argument and the very careful consideration given this question in the Northern Securities case renders it unnecessary to repeat the argument here.

Nowhere in the decisions of this court is there authority for the proposition that combinations by stock ownership or purchase of competing properties is invalid as to railroads but valid as to trading and manufacturing companies. The act of Congress and the decisions of this court, so far as the principle goes, place them upon the same plane. In the argument of the Freight Association cases it was urged by counsel that the inhibitions of the Sherman Act in this regard did not apply to railroads, but only included trading companies. It is now urged that they apply to railroads and do not apply to manufacturing and trading companies. But this court, in the Freight Association cases, clearly laid down the rule that, while there are points of difference existing between the two classes of corporations, yet they are all engaged in interstate commerce, that the injuries to the public have many common features, and that the inhibitions apply to all (166 U. S., 322). This part of the opinion, while too long to quote in this brief, is an absolute answer to every argument which has been advanced in this case. Mr. Justice Peckham here graphically points out the dangers to the community by combinations of capital in a large corporation, absorbing all the industries of the country, depriving a large number of small independent dealers of their business, and compelling them to become mere agents and servants of corporations. In this regard it is immaterial that the combination may lower the price, for one of the great injuries to the community is the deprivation of

an opportunity to the small individual manufacturer and dealer to engage in independent business for the support of his family.

But it is now urged with great persistency that, while this court has applied the rule to carriers, there is a distinction between public service corporations and manufacturing and trading companies, for the reason that public service corporations are obligated under the law to compete, and that placing the control of competing companies in one corporation through stock ownership gives the power to suppress competition. The distinction is purely imaginary. There is no statute or rule of law which requires railway corporations to compete with each other. The laws of the States and of Congress simply prohibit contracts, combinations, or arrangements which take away the incentive to competition or which make it to their self-interest not to compete. They leave it to the natural laws of trade and commerce to keep in motion that competition which all human experience shows self-interest makes effective. The laws of nearly every State in the United States, about forty of which we have examined, prohibit the common control of parallel or competing lines of road. None affirmatively requires them to compete. The anti-trust act effectuates the same purpose in interstate commerce through its declaration against combinations in restraint of trade. We know of no statute or principle of law that requires competing lines of roads to cut each other's rates or to struggle for business by running faster trains or giving better trans-

portation. These are left to the self-interest of the owners, to the inexorable laws of trade and commerce. The same principle applies to manufacturing, trading, and commercial companies of all classes. Men's personal interest in the broad field of human enterprise necessitates competition, and the object of the law is to maintain those reasonably competitive forces which for all time have stimulated human progress.

It may be argued that the Northern Securities Company did not purchase these stocks, but that it was a combination or scheme for the exchange of stocks, and that the Northern Securities Company was the mere holding company or trustee, like the Standard Oil Trust. The court did not base its opinion upon this point; in fact, in the subsequent case, the court held that this was a sale of the stocks to the Northern Securities Company. (See *Harriman* v. *Nor. Sec. Co.*, 197 U. S., 291 of opinion.) In reply to this contention Chief Justice Fuller said:

> In speaking of the situation as between the Government and the defendants, the Securities Company is sometimes referred to as the custodian of the shares and sometimes as the absolute owner, but in the sense that in either view the combination was illegal. For the purposes of that suit it was enough that in any capacity the Securities Company had the power to vote the railway shares and to receive the dividends thereon. The objection was that the exercise of its powers, whether those of owner or of trustee, would tend to

> prevent competition, and thus to restrain commerce.
>
> Some of our number thought that as the Securities Company owned the stock the relief sought could not be granted, but the conclusion was that the possession of the power, which, if exercised, would prevent competition, brought the case within the statute, no matter what the tenure of title was.
>
> Treating the question as an open one, it seems to us indisputable that, as between these parties, the transaction was one of purchase and sale.
>
> * * * * *
>
> And it is clear enough that the delivery to complainants of a majority of the total Northern Pacific stock and a ratable distribution of the remaining assets to the other Securities stockholders would not only be in itself inequitable, but would directly contravene the object of the Sherman law and the purposes of the Government suit (p. 297).

The latter remark in the opinion is directed to the acquisition of the stocks of the Northern Pacific by the Union Pacific. It was there held that the Union Pacific Company could not acquire the controlling interest in stocks of the Northern Pacific, because it would be in violation of the Sherman Act. And this is sound in reason. Can it be possible that a holding company which exchanged its stocks for the stocks of competing railway companies would tend to suppress interstate commerce, while the acquisition of the control of one competing line by another through direct purchase would not tend to suppress competition?

The combination in this case, however, has none of the elements of a sale of property such as would at common law be valid where the suppression of competition was secondary and merely an incident to the sale. Even in the early days, from 1872 to 1882, the transaction was, as to the leading concerns combined, an exchange of stocks in the Standard Oil Company for stocks in various corporations and limited partnerships which were thus combined, the number of the stockholders of the Standard Oil Company being increased from time to time in this manner. And as said by Judge Noyes in the case of *U. S.* v. *American Tobacco Co.* (164 Fed., 718), "An exchange of one plant for an interest in united plants possesses all the elements of combination."

The court has noticed from the statement of facts, *ante*, that in this manner the stockholders of the Standard Oil Company of Ohio increased from three or four stockholders to about forty, the capital stock of the Standard Oil Company being increased from $1,000,000 to $3,500,000 for that purpose. Moreover, the value of the property acquired by such exchange of stocks far exceeded $3,500,000; they, together with some stocks acquired by direct purchase, were turned in to the Trust in 1882 for $70,000,000 in trust certificates, and were actually valued at about $56,000,000. This shows that the stock of the Standard Oil Company was not used merely as so much money to pay for stocks, but that there was an exchange whereby all of the stockholders of these outside concerns became stockholders in the Standard Oil Company and the

stockholders in the Standard Oil Company became stockholders in these companies, their ownership being exercised ordinarily through individuals who held the stock in trust for their benefit. This scheme of common ownership through trustees was further carried out by the trust agreements of 1879 and 1882. When it was desired to take in copartnerships or individuals, their business was reorganized in the form of corporations, and a part or all of the stock was taken "for the benefit of the Standard Oil interests." Occasionally money was paid for stock so acquired, instead of an exchange of stocks, this money being taken from the profits of the various companies which had theretofore been acquired. After 1882, to be sure, some corporations were organized by the trustees themselves, notably the Standard Oil Companies of New York, New Jersey, and Indiana, but these companies in general took over properties which had previously belonged to companies which had been combined in the manner we have described and whose stocks were held by the Standard Oil trustees.

In the case of *Shawnee Compress Co.* v. *Anderson* (209 U. S., 423) we have seen that a lease of all the property of the Shawnee Company to its competitors and an agreement not to directly or indirectly engage in the compressing of cotton within 50 miles of the plant operated by the tenant was void both at common law and under the Sherman Act. If it was an unreasonable restraint of trade at common law, of course it needs no argument to show that it was a restraint under the Sherman Act.

There are various other cases having a direct bearing upon the question at bar. We have seen that after the Standard Oil Trust agreement, the National Lead Trust agreement, the Sugar Trust agreement, and the Whisky Trust agreement were respectively declared void, the people interested in these combinations set about immediately to find some other means of combination to take the place of the trust agreement.

The decision in the Sugar Trust case was in 1889. Shortly thereafter, and evidently in anticipation of a like decision in the Nebraska case, the trust certificate holders in the Whisky Trust organized a corporation under the laws of Illinois. The only distinction between that case and the case at bar is that the subsidiary corporations of the trust actually conveyed all of the property to the Distilling and Cattle Feeding Company, the stock of this company being issued in lieu of the trust certificates theretofore outstanding. In the case at bar the corporation as a holding company simply took the place of the trustees and exercised the same control by virtue of the stock ownership. The court held the trust agreement invalid, and said (156 Ill., 486, 490):

> There can be no doubt, we think, that the Distillers and Cattle Feeders Trust, which preceded the incorporation of the defendant, was an organization which contravened the well-established principles of public policy, and that it was therefore illegal. No one who intelligently considers the scheme of this trust,

as detailed in the information, can for a moment doubt that it was designed to be and was in fact a combination in restraint of trade, and that it was organized for the purpose of getting control of the manufacture and sale of all distillery products. * * *

But the defendant contends that, while this may all be so, the change in organization from an unincorporated association to a corporation, and the change in the mode of holding the distillery properties of the various corporations formerly belonging to the trust by surrendering the stock of the corporations, by means of which the control of those properties was formerly maintained, and having the properties themselves transferred and conveyed directly to the defendant corporation, have purged the combination of its illegality. It must be admitted that these changes, so far as they have any effect upon the rights or interests of the former stockholders in those corporations or of the public, are formal rather than substantial. The same interests are controlled in substantially the same way and by the same agencies as before. The nine trustees of the trust who, as the holders of all capital stock of the corporations and as a majority of the directors of each, controlled such corporate property, became the subscribers for all the stock of the new corporation, and its board of directors. The conveyance and transfer of the properties of the constituent companies to the new corporation was merely a transfer by the trustees to themselves, though in a slightly different

> capacity, and the former stockholders in the constituent companies simply exchanged their trust certificates, share for share, for stock in the new corporation. That corporation thus succeeds to the trust, and its operations are to be carried on in the same way, for the same purposes, and by the same agencies as before. The trust then, being repugnant to public policy and illegal, it is impossible to see why the same is not true of the corporation which succeeds to it and takes its place. The control exercised over the distillery business of the country—over production and prices—and the virtual monopoly formerly held by the trust are in no degree changed or relaxed, but the methods and purposes of the trust are perpetuated and carried out with the same persistence and vigor as before the organization of the corporation. There is no magic in a corporate organization which can purge the trust scheme of its illegality, and it remains as essentially opposed to the principles of sound public policy as when the trust was in existence. It was illegal before and is illegal still, and for the same reasons.

The same principle was enunciated in *Harding* v. *American Glucose Co.* (55 N. E., 577), and in *Dunbar* v. *Am. Teleph. & Telegr. Co.* (79 N. E., 427), where one of two rival companies purchased the majority of the stock of the other. The court held that it was in restraint of trade and void, citing the Distilling and Cattle Feeding case, the American Glucose case, the Chicago Gas Trust case, and others. There are other Illinois cases substantially the same.

In the case of the *National Lead Co.* v. *Grote Paint Co.* (80 Mo. App., 247), cited and approved in the case of *Finck* v. *Schneider Granite Co.* (86 S. W., 318), it was held that a corporation organized to succeed a trust was illegal. The court cited the Illinois cases, the Standard Oil case from Ohio, the Freight Association and Joint Traffic cases, and said:

> * * * A combination which is illegal under the antitrust law can not be operated under the cloak of a corporation by its constituent members or governing bodies.

In the case of *Ford* v. *Milk Shippers' Association*, *supra*, the members of a milk trust subsequently incorporated brought action against a purchaser of the commodity sold by the corporation, who defended on the ground that it was formed in furtherance of a trust scheme and transacting business in contravention of an antitrust act. The Supreme Court of Illinois said (155 Ill., 180):

> The corporation, as an entity, may not be able to create a trust or combination with itself, but its individual shareholders may, in controlling it, together with it, create such trust or combination that will constitute it, with them, alike guilty.

In the case of *Richardson* v. *Buhl* (77 Mich., 632), which was cited and approved in the Northern Securities case, a corporation was organized under the laws of Connecticut for the purpose of uniting by purchase all of the match factories in the United States. Thirty-one concerns went into this combination, and

out of these all except 13 were closed and ceased to manufacture. The court held the agreement for the acquisition of certain properties void. This was not a case of combination of stock interests, but the purchase of the principal match factories in the country. To be sure, many of them were paid for by the issuance of stock. That part of the opinion of Chief Justice Campbell dealing with this question is contained on pages 656 to 659:

> I think no one can read the contract in question and fail to discover that considerations of public policy are largely involved. The intention of the agreement is to aid in securing the objects sought to be attained in the formation and organization of the Diamond Match Company. This object is openly and boldly avowed. Not only does this appear in its organization, and in the business it proposes to conduct, and in the modes and manner of carrying it on, but the testimony of General Alger himself avers it and settles its character beyond question. The organization is a manufacturing company. The business in which it is engaged is making friction matches. Its articles provide for the aggregation of an enormous amount of capital, sufficient to buy up and absorb all of that kind of business done in the United States and Canada, to prevent any other person or corporation from engaging in or carrying on the same, thereby preventing all competition in the sale of the article manufactured. This is the mode of conducting the business and the manner of

carrying it on. The sole object of the corporation is to make money by having it in its power to raise the price of the article, or diminish the quantity to be made and used, at its pleasure. Thus both the supply of the article and the price thereof are made to depend upon the action of a half dozen individuals, more or less, to satisfy their cupidity and avarice, who may happen to have the controlling interest in this corporation, an artificial person, governed by a single motive or purpose, which is to accumulate money regardless of the wants or necessities of over sixty millions of people. The article thus completely under their control for the last fifty years has come to be regarded as one of necessity not only in every household in the land, but one of daily use by almost every individual in the country. It is difficult to conceive of a monopoly which can affect a greater number of people, or one more extensive in its effect on the country, than that of the Diamond Match Company. It was to aid that company in its purposes and in carrying out its object that the contract in this case was made between these parties, and which we are now asked to aid in enforcing. Monopoly in trade or in any kind of business in this country is odious to our form of government. It is sometimes permitted to aid the Government in carrying on a great public enterprise, or public work under governmental control, in the interest of the public. Its tendency is, however, destructive of free institutions, and repugnant to the instincts of a

free people, and contrary to the whole scope and spirit of the Federal Constitution, and is not allowed to exist under express provisions in several of our state constitutions. Indeed, it is doubtful if free government can long exist in a country where such enormous amounts of money are allowed to be accumulated in the vaults of corporations, to be used at discretion in controlling the property and business of the country against the interest of the public and that of the people, for the personal gain and aggrandizement of a few individuals. It is always destructive of individual rights, and of that free competition which is the life of business, and it revives and perpetuates one of the great evils which it was the object of the framers of our form of government to eradicate and prevent. It is alike destructive to both individual enterprise and individual prosperity, whether conferred upon corporations or individuals, and therefore public policy is, and ought to be, as well as public sentiment, against it. All combinations among persons or corporations for the purpose of raising or controlling the prices of merchandise, or any of the necessaries of life, are monopolies and intolerable, and ought to receive the condemnation of all courts. In my judgment not only is the enterprise in which the Diamond Match Company is engaged an unlawful one, but the contract in question in this case, being made to further its objects and purposes, is void upon the ground that it is against public policy.

This doctrine has been reaffirmed by a very late decision in the Supreme Court of Michigan, *Hunt* v. *Riverside Cooperative Club* (140 Mich., 538), in which the court held that an arrangement between the wholesale dealers and the plumbers of Detroit, whereby the plumbers were to purchase their supplies at a fixed price, tended to monopoly, and was against public policy.

American Biscuit & Mfg. Co. v. *Klotz* (44 Fed. Rep., 721). This was an application for a receiver and an accounting. The facts were these: The defendant, Klotz, and his partner, composing the firm of B. Klotz & Company, sold to the American Biscuit and Manufacturing Company their biscuit and confectionery business for the price of $259,000 and an assumption of the debts of the firm amounting to $42,000, which were to be paid out of the income from future business. The purchase price was paid in stock of the complainant company. After the sale was completed, Klotz continued to carry on the business as agent of the purchaser. At length, however, Klotz repudiated the sale, erased the name of the complainant from the bakery, transferred the policies of insurance from the complainant to himself, and resumed possession of the property and the conduct of the business; all of this without resort to any legal proceedings. Out of this situation grew the application of the complainant for an injunction and accounting and for a receiver. The preliminary application for a receiver was denied, but in the course of its gen-

eral consideration of the merits of the case the court said, Pardee and Billings, JJ. (p. 723):

> We are not satisfied that the complainant's business is legitimate. While the nominal purpose of the complainant's corporation, as stated in its charter, is the manufacture and sale of biscuit and confectionery, its real scope and purpose seems to be to combine and pool the large competing bakeries throughout the country into practically what is known and called a "trust," the effect of which is to partially, if not wholly, prevent competition, and enhance prices of necessary articles of food, and secure, if not a monopoly, a large control of the supply and prices in leading articles of breadstuffs. The case shows that an insignificant number of shares of complainant's stock was unconditionally subscribed for, apparently enough to qualify directors; but the great mass was taken and held by irresponsible parties, to be used in parceling out as full-paid stock to such leading and successful bakeries throughout the country as could be induced to come in on an agreed value of the property and a large estimate of good will. Each bakery, when secured, to be carried on by its former managers, subject, however, as to control of funds, territory, prices, and competition, to the central management, all profits pooled, and of course division thereof to be made on the basis of the stock assigned to each bakery. Under this arrangement complainant has already secured the control, and pooled the business, of 35 of the leading bakeries in 12 different States of the West and

South, and is evidently seeking more constituents. The act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," expressly prohibits, under severe penalties, "every contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States," and declares punishable "every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the common trade or commerce among the several States." The enforcement of this act is, by the statute, devolved upon the circuit courts of the United States.

* * * * *

In construing the federal and state statutes, we exclude from consideration all monopolies which exist by legislative grant; for we think the word "monopolize" can not be intended to be used with reference to the acquisition of exclusive rights under government concession, but that the lawmaker has used the word to mean "to aggregate" or "concentrate" in the hands of few, practically, and, as a matter of fact, and according to the known results of human action, to the exclusion of others; to accomplish this end by what, in popular language, is expressed in the word "pooling," which may be defined to be an aggregation of property or capital belonging to different persons, with a view to common liabilities and profits. The expression in each law, "combination in the form of trust," would seem to

point to just what, in popular language, is meant by pooling.

Now, it is to be observed that these statutes outline an offense, but require for its complete commission no ulterior motive, such as to defraud, etc.; and, further, that the language is altogether silent as to what means must be used to constitute the offense. The offense is defined to "combine, in the form of trust, or otherwise, in restraint of trade or commerce," and "to monopolize, or attempt to monopolize, any of the trade or commerce." To compass either of these things, with no other motive than to compass them, and by any means, constitutes the offense. One just and decisive test of the meaning of the expression "to monopolize" is obtained by getting at the evil which the lawmaker has endeavored to abolish and restrict. The statutes show that the evil was the hindrance and oppression in trade and commerce wrought by its absorption in the hands of the few, so that the prices would be in danger of being arbitrarily and exorbitantly fixed, because all competition would be swallowed up, so that the man of small means would find himself excluded from the restraint or monopolized trade or commerce as absolutely as if kept out by law or force. If this is the meaning of the defining words, does not this corporation, thus glutted with the 35 industries of 12 States, disclose an "attempt to monopolize?" So far, therefore, as the complainant's business is a combination in restraint of trade, or is an "attempt to monopolize, or combine, in the form of a trust,

or otherwise, any part of trade or commerce," as these words are properly defined, the law stamps it as unlawful, and the courts should not encourage it.

A very late case from the Circuit Court of Appeals of the Second Circuit is the case of the *Pennsylvania Sugar Refining Co.* v. *American Sugar Refining Co.* (166 Fed., 254), reversing Judge Holt in the same case (160 Fed., 144). The Pennsylvania Sugar Refining Company had, from 1883 to 1898, been engaged in the business of importing, refining, and selling sugar. From 1898 to 1901 it ceased to do business, and in 1901 it commenced the erection of a new and enlarged refinery, which was completed in 1903. About the time of its completion and before it commenced to do business, the American Sugar Refining Company, through Gustave E. Kissel and certain others of the defendants entered into a conspiracy pursuant to which Kissel, as agent for the American Sugar Refining Company, but without disclosing his principal, loaned to Siegel a million and a quarter dollars, and took from him collateral security, among which was $2,600,000 of the stock of the plaintiff company. He agreed that four of the seven directors would resign and their places be filled by Kissel's principal. The agreement was carried out. The four new directors, constituting a majority of such board, pursuant to the conspiracy, voted not to operate the plaintiff's plant until the further order of the board. Suit was brought against the defendants for damages under

the Sherman Act. Judge Holt held that this could not be distinguished from *United States* v. *Knight*. Judge Noyes, with whom concurred Lacombe and Cox, reversed this decision, distinguished the case from the Knight case on the ground that this plaintiff had been engaged and was intending to engage not only in importing raw sugar but in manufacturing and selling it in other States, and that the allegation showed an intention to suppress competition by neglecting to start a sugar refinery constructed to continue the business. The American Sugar Refining Company procured the suppression of competition by the acquisition of the stock of the competitive company. The board of directors, pursuant to this stock ownership, voted not to operate the plant. The power to suppress competition came through the control incident to the ownership of this stock.

There are various cases where selling agencies have been organized for the purpose of selling jointly the output of manufacturers or producers. Such cases are—

Continental Wall Paper Co. v. *Voight*, 148 Fed., 939; 212 U. S., 227.

United States v. *General Paper Co.*, 201 U. S., 117.

Pocahontas Coal Co. v. *Powhatan Coal & Coke Co.*, 60 W. Va., 508.

Slaughter v. *Thacker Coal Co.*, 55 W. Va., 642.

Finck v. *Schneider Granite Co.*, 80 S. W., 213.

These cases are all very similar. The scheme adopted was a modern scheme to evade the combination of stock ownerships similar to the Northern Securities case, and direct agreements dividing territory and fixing prices, like the Addyston Pipe case, and various other devices which had been theretofore declared void.

In all of these cases we have seen that the court held it but another device for the suppression of competition. We can not see that there is any material distinction between them and the case at bar. The selling company controlled the price. In the case at bar the holding company not only controls the price but regulates all of the affairs of the subsidiary companies.

In the *National Harrow cases* (76 Fed., 667; 83 Fed., 37) corporations were organized for the purpose of rereceiving assignments of the various patents under which the manufacturers were engaged in making harrows, and of granting licenses to the manufacturers allowing them to continue making the same kind of harrows they had previously made, and for the purpose of fixing the price at which the harrows should be sold. The court held that this was in violation of the Sherman Act.

The same combination came before the Supreme Court of New York in the case of *Strait et al* v. *National Harrow Co.* (18 N. Y. Supp., 224), and was there held void.

See also *Park & Sons* v. *Hartman* (153 Fed., 24).

A consideration of the Knight case.

The case of *United States* v. *E. C. Knight Company* (156 U. S., 1) has been cited and relied on by the defendants in most prosecutions under the Sherman Act, in support of the proposition that the mere acquisition of manufacturing plants does not amount to a combination in restraint of interstate trade or commerce, and that even though substantially all the manufactories of the country of a given product be acquired in one ownership, such acquisition, in and of itself, does not constitute a monopoly of interstate commerce within the Sherman Act. The petition filed in the *Knight case* attacked certain contracts made by one Searles on behalf of the American Sugar Refining Company for the purchase of four separate refineries in the city of Philadelphia. The scope of the bill was so narrow, and the averment of facts restricted to such a small compass, that it presented, as the majority of this court found, simply the question whether or not under the Sherman Act the Government could maintain a bill for a rescission of contracts of sale and purchase of the four manufactories in the city of Philadelphia because, by such acquisition, the purchaser secured 96 per cent of all the manufactories of sugar in the United States. Judge Butler, in dismissing the bill in the Circuit Court, said (60 Fed., 309):

> The contracts and acts of defendants relate exclusively to the acquisition of sugar refineries and the business of sugar refining in

> Pennsylvania. They have no reference and bear no relation to commerce between the States or with foreign nations. * * * It is the stream of commerce flowing across the States, and between them and foreign nations, that Congress is authorized to regulate. To prevent direct interference with or disturbance of this flow alone was the power granted to the Federal Government.

Upon this finding of fact the bill was dismissed, and, on appeal, a majority of this court approved the action of the trial judge. They treated the whole question to be whether, conceding that the execution of these contracts and the conveyance to the American Sugar Refining Company pursuant thereto of the four refineries embraced therein would give the sugar company a monopoly in manufacture, that monopoly could be directly suppressed under the act of Congress in the mode attempted by the bill, and decided that question in the negative, because the court considered that, while the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, that is a secondary and not the primary sense, for, although the exercise of that power might result in bringing the operation of commerce into play, it did not control it, and affected it only incidentally and indirectly.

> "There was nothing in the proofs," said the Chief Justice, "to indicate any intention to put a restraint upon trade or commerce, and the fact, as we have seen, that trade or com-

> merce might be indirectly affected was not enough to entitle complainants to a decree. The subject-matter of the sale was shares of manufacturing stock, and the relief sought was the surrender of property which had already passed and the suppression of the alleged monopoly in manufacture by the restoration of the *status quo* before the transfers; * * *." (Page 17.)

The decision in the case, therefore, turned upon a pure question of fact, and such a decision binds neither the court nor anyone else in any subsequent case arising out of different facts. *The proposition of law involved* was that the States were left by the Constitution to the exercise by them of their police power over persons and property within their borders, while the constitution gave to Congress the exclusive power to regulate commerce among the States. This distinction was carefully drawn by the Chief Justice in the following language:

> The regulation of commerce applies to the subjects of commerce and not to matters of internal police. Contracts to buy, sell, or exchange goods to be transported among the several States, the transportation and its instrumentalities, and articles bought, sold, or exchanged for the purposes of such transit among the States, or put in the way of transit, may be regulated, but this is because they form part of interstate trade or commerce. (Page 13.)
>
> There was nothing in the proofs to indicate any intention to put a restraint upon trade or

> commerce, and the fact, as we have seen, that trade or commerce might be indirectly affected was not enough to entitle complainants to a decree. (Page 17.)

That was the pith of the whole decision, and on the findings of fact, assuming their correctness, no other conclusion could have been reached.

Mr. Justice Harlan's dissent was based upon a different inference, drawn by him from the same facts, which was that a broader conclusion was required than that drawn by the Circuit Court and a majority of the Supreme Court and that the acts of the defendants evidenced a distinct intention to monopolize interstate trade and commerce in sugar.

> It is said that there are no proofs in the record which indicate an *intention* upon the part of the American Sugar Refining Company and its associates to put a restraint upon trade or commerce. * * * Did anyone expect to find in the written agreements which resulted in the formation of this combination a distinct expression of a purpose to restrain interstate trade or commerce? (Page 43.)

The majority of the court did not decide that the acquisition of 96 per cent of the manufacturing plants in the United States by the American Sugar Refining Company did not constitute a monopoly; but that, on the facts stated in the bill and found by the court, there was no monopoly of interstate commerce. The Chief Justice put the proposition involved squarely:

> The fundamental question is, whether conceding that the existence of a monopoly in

> manufacture is established by the evidence, that monopoly can be directly suppressed under the act of Congress in the mode attempted by this bill. (Page 11.)

The subsequent investigation was merely into the question whether or not, on the evidence, interstate commerce was involved, and having found that there was nothing in the proofs to indicate any intention to put a restraint upon interstate commerce, it was held that the fact that such trade or commerce might be indirectly affected was not enough to entitle complainants to a decree.

Congress, the Chief Justice said, did not attempt, by the act of 1890—

> to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by the States or the citizens of the States in the acquisition, control, or disposition of property; or to regulate or prescribe the price or prices at which such property or the products thereof should be sold; or to make criminal the acts of persons in the acquisition and control of property which the States of their residence or creation sanctioned or permitted. Aside from the provisions applicable where Congress might exercise municipal power, what the law struck at was combinations, contracts, and conspiracies to monopolize trade and commerce among the several States or with foreign nations; * * * (Pages 16, 17.)

In all subsequent decisions of this court the *Knight case* has been treated as turning upon the point that

as a matter of fact the contracts and acts of the defendants related exclusively to the acquisition of properties in the State of Pennsylvania and had no direct relation to interstate commerce, and that the evidence failed to disclose any intention to affect interstate commerce.

Thus in the *Trans-Missouri case* (166 U. S., 290, 313), Peckham, J., said:

> We have held that the trust act did not apply to a company engaged in one State in the refining of sugar under the circumstances detailed in the case of *United States* v. *E. C. Knight Company* (156 U. S., 1), because the refining of sugar under those circumstances bore no distinct relation to commerce between the States or with foreign nations.

In the *Addyston Pipe case* (175 U. S., 211, 240), Peckham, J., said:

> The direct purpose of the combination in the *Knight case* was the control of the manufacture of sugar. There was no combination or agreement in terms regarding the future disposition of the manufactured article; nothing looking to a transaction in the nature of interstate commerce.

The probable intention on the part of the manufacturer of sugar, he held, did not supply that needed proof.

In the *Northern Securities case* (193 U. S., 197), Harlan, J., writing the prevailing opinion, said of the *Knight case*—

> that the agreement or arrangement there involved had reference only to the manufacture or production of sugar by those engaged in the alleged combination, but if it had directly embraced interstate or international commerce, it would then have been covered by the anti-trust act and would have been illegal; * * * (Page 329.)

and in the same case, in his dissenting opinion, White, J., referring to the *Knight case*, said:

> There, as the contract merely concerned the purchase of stock in the refineries and contained no condition relating to the movement in interstate commerce of the goods to be manufactured by the refining companies, the court held, as the right to acquire was not within the commerce clause, the fact that the owners of the manufactured product might thereafter so act concerning the product as to burden commerce, there was no direct burden resulting from the mere acquisition and ownership. (Page 395.)

In the *Swift case* (196 U. S., 375, 397) Holmes, J., said that the subject-matter of the combination in the *Knight case*—

> was manufacture and the direct object monopoly of manufacture within a State. However likely monopoly of commerce among the States in the article manufactured was to

> follow from the agreement, it was not a necessary consequence nor a primary end.

And, finally, in *Loewe* v. *Lawlor* (208 U. S., 274, 297), the court referred to the *Knight case* as one—

> in which the undisputed facts showed that the purpose of the agreement was not to obstruct or restrain interstate commerce.

But the distinction between the Knight case and the case at bar is obvious. Here was a combination to place the control of all these corporations in the Standard Oil Company. These subcompanies were engaged not only in purchasing and refining oil, but in transporting the same through pipe lines which they owned and operated, and which they admitted to be common carriers in three States. They were also engaged in manufacturing and transporting the products by car-line companies in the same combination into all the various States, and selling the same. They were individually and collectively engaged directly in interstate commerce as distinguished from the mere manufacture and local sale of products. This combination comes squarely within the decision in the Northern Securities case in its unification of these interests for the purpose of restraining commerce and monopolizing the same. Within that decision it is a combination in the form of a trust or conspiracy in restraint of trade. The court there said:

> No scheme or device could more certainly come within the words of the act—"combination in the form of a trust or otherwise * * *

> in restraint of commerce among the several States or with foreign nations"—or could more effectively and certainly suppress free competition between the constituent companies. This combination is, within the meaning of the act, a "trust;" but if not, it is a *combination in restraint of interstate and international commerce;* and that is enough to bring it under the condemnation of the act. The mere existence of such a combination and the power acquired by the holding company as its trustee constitute a menace to, and a restraint upon, that freedom of commerce which Congress intended to recognize and protect, and which the public is entitled to have protected.

The evidence brings this case within the doctrine of the *Swift* case, by reason of the means used to effectuate the combination to completely control the commerce in oil among the States and thus to secure a monopoly of such commerce, to wit, obtaining rebates and discriminatory rates, unfair methods of competition, and division of territory between the various companies. In the latter respect it is analogous to the Addyston Pipe case. As we have seen, it was argued in the Northern Securities case that the right to purchase properties was inherent in every individual; that Congress could not forbid a single individual from disposing of his stock or a state corporation from acquiring it. It was suggested that the mere acquisition and ownership of stock in a state corporation was not interstate com-

merce, even though such corporation itself might be engaged in that commerce. (See pages 333 and 334 of opinion.) The Knight case, the Joint Traffic cases, and other cases were cited in support of this authority.

There is no question that the Supreme Court of the United States has in subsequent decisions consistently emphasized the limitations of the decision in the Knight case, and pointed out that it is not an authority for the proposition that the combination of manufacturers engaged not only in manufacturing but transporting and selling their products in various States is not within the Sherman Act.

U. S. v. *Northern Securities Co.*, 193 U. S., 334.

Loewe v. *Lawlor*, 208 U. S., 274.

U. S. v. *Swift & Co.*, 196 U. S., 375.

Montague v. *Lowry*, 193 U. S., 38.

Shawnee Compress Co. v. *Anderson*, 209 U. S., 423.

(*c*) THAT THE ACTS OF THE DEFENDANTS IN SECURING THE CONTROL OF THE COMMERCE IN PETROLEUM AND ITS PRODUCTS, BY THE STANDARD OIL COMPANY OF NEW JERSEY, THROUGH ITS VARIOUS SUBSIDIARY CORPORATIONS, AMOUNT TO THE MONOPOLIZING OR ATTEMPTING TO MONOPOLIZE INTERSTATE TRADE AND COMMERCE WITHIN SECTION 2 OF THE SHERMAN ACT.

The second section of the act prohibits a person or a single corporation from monopolizing or attempting to monopolize any part of the commerce of the country by any means whatever, and also from

conspiring with any other person or persons to accomplish the same object. The two sections of the act were manifestly not intended to cover the same thing; otherwise the second section would be useless.

Any contract or combination in the form of a trust or otherwise, or conspiracy in restraint of trade, which *tends to monopoly* is prohibited by the first section. This has been settled by a long line of decisions.

> *Addyston Pipe case*, 175 U. S., 211.
> *United States* v. *Northern Securities Co.*, 193 U. S., 334.

This section contemplates some contract to which of course there must be more than one party; some combination of interests, by purchase or other form of acquisition, or a conspiracy between individuals, for the purpose of restraining commerce.

Many of these forms of contract, combinations, and trusts were familiar to Congress at the time of the passage of the Sherman Act.

The second section was intended to accomplish something more. It was a broad, sweeping provision against the monopolization of commerce or an attempt to monopolize commerce in any manner. This section is in the disjunctive. It provides that:

> Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce with the several States, or with foreign nations, shall be guilty of a misdemeanor, etc.

The fourth section of the act confers upon the circuit courts jurisdiction "to prevent and restrain violations of this act."

In the eighth section the words "person or persons" are declared to include corporations and associations existing under the laws of the United States or the laws of any State, Territory, or foreign country.

Of course it is a fundamental principle of construction that language is to be given its ordinary meaning, and when the act prohibits a single person or corporation from monopolizing commerce or any part of commerce, or combining with any other person or corporation to accomplish the same purpose, it manifestly means what it says. It prohibits a single corporation by any means from monopolizing or attempting to monopolize any part of the commerce of the country, whether this be by the acquisition of stocks of various corporations, by unfair methods of competition, by discrimination or preferences in rates of transportation, by abuse of the powers incident to the enormous aggregation of capital, or by any other means.

Unless the second section of the act is broader than the first—in other words, unless the second section inhibits monopoly accomplished by some means other than the particular restraints of trade named in the first section—it is meaningless, because every contract or combination or conspiracy to restrain trade is inhibited by the first section when it "*tends to monopoly*," without invoking the second section at all. So that if monopoly accomplished by any means

other than by contracts and combinations in restraint of trade is not prohibited by the second section, that section performs no office whatever in the Sherman Act.

This construction is evident from what took place when the bill was pending before Congress. An amendment was offered by Senator Gray, of Delaware, to strike out the words "monopolize, or attempt to monopolize, or," leaving the section to read, "Every person who shall combine or conspire with any other person or persons to monopolize any part of the trade," etc. The amendment was rejected. Senator Edmunds, in explaining the meaning of section 2, said:

> I have only to say, in regard to the amendment suggested by my friend from Delaware and the suggestions of the Senator from West Virginia, that this subject was not lightly considered in the committee, and that we studied it with whatever little ability we had, and the best answer I can make to both my friends is to read from Webster's Dictionary the definition of the verb "to monopolize:"
>
> 1. To purchase or obtain possession of the whole of, as a commodity or goods in market, with the view to appropriate or control the exclusive sale of; as, to monopolize sugar or tea.
>
> Like the sugar trust. One man, if he had capital enough, could do it just as well as two.
>
> 2. To engross or obtain by any means the exclusive right of, especially the right of trading to any place or with any country or district; as, to monopolize the India or Levant trade.
>
> The old definition. So I assure my friends that although we may be mistaken (we do not pretend to know all the law) we were not blind

> to the very suggestions which have been made, and we thought we had done the right thing in providing, in the very phrase we did, that if one person instead of two, by a combination—if one person alone, as we have heard about the wheat market in Chicago, for instance—did it, it was just as offensive and injurious to the public interest as if two had combined to do it. (Cong. Record, vol. 21, part 4, pp. 3151, 3152.)

The question then is, What is the meaning of the word monopoly as used in the second section of the act? Of course, Congress did not have in mind monopoly by legislative or executive grant. (*National Cotton Oil Co.* v. *Texas*, 197 U. S., 129. *Burrows* v. *Interborough Metropolitan Co.*, opinion by Judge Holt, 156 Fed., 389.) Such monopolies could not exist in this country except by grant of Congress or the States, and it has been held that exclusive grants to pursue an ordinary legitimate business are void. (*Butchers' Union* v. *Crescent City Co.*, 111 U. S., 754, decided in 1883; we especially call the court's attention to the opinion of Mr. Justice Field, pages 754, 755.)

Neither did Congress have in mind an absolute monopoly. This can only be obtained by legislative grant. In a country like ours, where everyone is free to enter the field of industry, no absolute monopoly is probable. It is sufficient if the contract, the combination, or the aggregation of capital "tends to monopoly" * * * "or are reasonably calculated to bring about the things forbidden."

In *Waters-Pierce Co.* v. *Texas* (212 U. S., 86) the court was considering a statute of Texas which denounced acts that "tend to," or "are reasonably calculated to bring about," monopoly, and held that the statute of Texas in this respect was no different from the provisions of the Sherman Act, quoting from the Knight case, the Addyston Pipe case, the Northern Securities case, and the Swift case. The court said (pp. 110, 111):

> As to the phrase, "reasonably calculated," what does it include less than acts which, when fairly considered, tend to accomplish the prohibited thing, or which make it highly probable that the given result will be accomplished? * * *
>
> We are not prepared to say that there was a deprivation of due process of law because the statute permitted and the court charged that there might be a conviction not only for acts which accomplished the prohibited result, but also for those which tend or are reasonably calculated to bring about the things forbidden.

The court quoted the language of Mr. Justice Holmes in the Swift case, as follows:

> The statute gives this proceeding against combinations in restraint of commerce among the States and against attempts to monopolize the same. Intent is almost essential to such a combination and is essential to such an attempt. Where acts are not sufficient in themselves to produce a result which the law seeks to prevent, for instance, the monopoly, but require further acts in addition to the

> mere forces of nature to bring that result to pass, an intent to bring it to pass is necessary in order to produce a dangerous probability that it will happen. (*Commonwealth* v. *Peaslee*, 177 Mass., 267, 272.) But when that intent and the consequent dangerous probability exists, this statute, like many others, and like the common law in some cases, directs itself against that dangerous probability as well as against the completed result.

In the *Addyston Pipe case* (175 U. S., 237) this court said:

> Now, the restraint thus imposed on themselves was only partial. It did not cover the United States. There was not a complete monopoly. It was tempered by the fear of competition and it affected only a part of the price. But this certainly does not take the contract of association out of the annulling effect of the rule against monopolies.

In the Northern Securities case, page 332, Mr. Justice Harlan said:

> That to vitiate a combination, such as the act of Congress condemns, it need not be shown that the combination, in fact, results or will result in a total suppression of trade or in a complete monopoly, but it is only essential to show that by its necessary operation it tends to restrain interstate or international trade or commerce or tends to create a monopoly in such trade or commerce and to deprive the public of the advantages that flow from free competition.

In *National Cotton Oil Co.* v. *Texas* (197 U. S., 129 of opinion), Mr. Justice McKenna, speaking of the subject of monopoly, defined it as follows:

> It is enough to say that the idea of monopoly is not now confined to a grant of privileges. It is understood to include a "condition produced by the acts of mere individuals." Its dominant thought now is, to quote another, "the notion of exclusiveness or unity;" in other words, the suppression of competition by the unification of interest or management, or it may be through agreement and concert of action. And the purpose is so definitely the control of prices that monopoly has been defined to be "unified tactics with regard to prices." It is the power to control prices which makes the inducement of combinations and their profit.

In *Shawnee Compress Co.* v. *Anderson* (209 U. S., 433–4) the court held that the lease of the compress company to a competing concern tended to monopoly. The court said:

> To what object was the assembling in one ownership or management so many compresses and keeping the means and declaring the purpose of acquiring more? The answer would seem to be obvious. The first effect would necessarily be the cessation of competition. If there was left a possibility of other compresses being constructed, it was made less by the power that could be opposed to them. The Gulf Company was a close corporation, which,

> starting in Alabama, rapidly extended from Alabama to all the cotton-growing territory. These are some of the points of the testimony which, taken in connection with other testimony and with the terms of the lease and the restriction upon the Shawnee Company, support the conclusions of the Supreme Court of the Territory. This case presents something more than the lease of property by the Shawnee Company, induced or made necessary by financial embarrassment. It presents something more than the acquisition by the Gulf Company of another compress—of a mere addition to its business. It presents acts in aid of a scheme of monopoly.

In *Burrows* v. *Interborough Metropolitan Co.*, it was held that the amalgamation of the stocks of the traction companies in New York tended to monopoly. The court was there construing a section of the New York statute which reads as follows:

> No domestic stock corporation and no foreign corporation doing business in this State shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade or for the prevention of competition in any necessary of life.

The statute in this respect differs from the federal statute in that it prevents the combination for the purpose of creating a monopoly, while the federal statute prevents any combination in restraint of trade, and also prevents any person from monopolizing or

attempting to monopolize commerce. Judge Holt said (156 Fed., 392):

> The defendants' counsel asserts that by the acts alleged in the bill there was no creation of a monopoly, because the essential quality of monopoly is the power to exclude all others from the field monopolized. This is, of course, the strict legal meaning of the term. A patent or copyright in this country, or such exclusive privileges as Elizabeth and James I were accustomed to confer upon individuals, which gave rise to the great historic controversy in England over monopolies, resulting in the decisions of the courts that they were void at common law, and the act of Parliament declaring that the King had no power to grant them, are monopolies in their strict legal sense. But the word has a different, but a commoner and equally well understood meaning. When a person or persons have, in fact, obtained a substantially complete control of a particular business or article of trade, they are said to have a monopoly, although they have no legal power to prevent others from competing or attempting to compete with them. I think there can be no doubt that the monopoly prohibited in section 7 of the stock corporations act is of the latter kind. No corporation can, by combining with any other corporation or person, create that kind of monopoly by which they can legally exclude anyone else from attempting at least to enter into the same business. Nothing but sovereign power can do that. The monopoly contemplated by section

> 7 of the stock corporations law is one created merely by contract, and is therefore not, in its legal essence, exclusive.

In the Pocahontas Coal case it was said (60 W. Va., 525):

> It is no defense to the illegality of a contract or combination which is in unreasonable restraint of trade to show that in the particular case a complete monopoly has not been formed, or that no control of prices has been exercised, or that prices have been lowered and not raised. (*U. S.* v. *Addyston Pipe & Steel Co., supra;* Brannon, 14th Amend., supra; 20 Am. and Eng. Enc. Law, 850.) If a contract or combination in unreasonable restraint of trade could not be attacked until a complete monopoly had been formed, then the law against monopolies would be unavailing. In this country it would be almost impossible to combine all the interests in any line of industry into a single and complete monopoly.

In *American Biscuit Mfg. Co.* v. *Klotz* (44 Fed., 721), the plaintiff had purchased some 35 of the leading bakeries in 12 different States of the West and South, and Judges Pardee and Billings held that this was an attempt to monopolize commerce. They said:

> The statutes show that the evil was the hindrance and oppression in trade and commerce wrought by its absorption in the hands of the few, so that the prices would be in danger of being arbitrarily and exorbitantly fixed, because all competition would be swallowed

> up, so that the man of small means would find himself excluded from the restrained or monopolized trade or commerce as absolutely as if kept out by law or force. If this is the meaning of the defining words, does not this corporation, thus glutted with the 35 industries of 12 States, disclose an "attempt to monopolize?"

It is a fact worthy of note that among the leading cases defining monopolies, contracts, and combinations which tend to monopoly, are the cases involving either the Standard Oil Trust and similar trusts or the Standard Oil corporate combination of 1899. In every instance where the Standard Oil combination has come before the state courts it has been held invalid as a monopoly or tending to monopoly.

> *State* v. *Standard Oil Co.*, 49 Ohio St., 137.
> *Texas* v. *Waters-Pierce Oil Co.*, 212 U. S., 86.
> *Missouri* v. *Waters-Pierce Oil Co.* and *Standard Oil Co.*, 218 Mo., 1.
> *Tenn.* v. *Standard Oil Co.*, 117 Tenn., 618.

If the Standard Oil combination is in violation of state laws where it affects intrastate commerce, it would seem to be a persuasive argument that it is also in violation of the federal laws when restricting or monopolizing interstate commerce.

We call the court's attention particularly to the language used in 49 Ohio (pp. 185, 186, 187):

> Its object was to establish a virtual monopoly of the business of producing petroleum and of manufacturing, refining, and dealing in it and all its products throughout the entire

country, and by which it might not merely control the production, but the price at its pleasure.

* * * * *

Monopolies have always been regarded as contrary to the spirit and policy of the common law. * * * A society in which a few men are the employers and the great body are merely employees or servants is not the most desirable in a republic, and it should be as much the policy of the laws to multiply the numbers engaged in independent pursuits or in the profits of production as to cheapen the price to the consumer. Such policy would tend to an equality of fortunes among its citizens, thought to be so desirable in a republic, and lessen the amount of pauperism and crime. It is true that in the case just cited the monopoly had been created by letters patent. But the objections lie not to the manner in which the monopoly is created. The effect on industrial liberty and the price of commodities will be the same whether created by patent or by an extensive combination among those engaged in similar industries controlled by one management. By the invariable laws of human nature, competition will be excluded and prices controlled in the interest of those connected with the combination or trust.

To the same effect are—

The Lead Trust case, 80 Mo. App., 247.

The Distilling & Cattle Feeding case, 156 Ill., 448.

Harding v. *American Glucose Co.*, 55 N. E., 577.

People v. *Chicago Gas Trust Co.*, 130 Ill., 268. *Dunbar* v. *Am. Teleph. & Telegr. Co.*, 79 N. E., 423.

In the Chicago Gas Trust case (130 Ill., 295) the court said:

> If contracts and grants, whose tendency is to create monopolies, are void at common law, then where a corporation is organized under a general statute, a provision in the declaration of its corporate purposes, the necessary effect of which is the creation of a monopoly, will also be void.

In the Sugar Trust case, speaking of a trust agreement similar to the Standard Oil Trust, Barrett, J., said (54 Hun., 377):

> Of course a monopoly in the strict, technical, and absolute sense can not be thus created, but a monopoly in a legal sense can. The monopoly with which the law deals is not limited to the strict equivalent of royal grants or people's patents. Any combination the tendency of which is to prevent competition in its broad and general sense and to control, and thus at will enhance, prices to the detriment of the public is a legal monopoly.

In the Diamond Match case (*Richardson* v. *Buhl*, 77 Mich., 660) it was held that the contract to acquire match factories was void as tending to monopoly:

> Its object and direct tendency is to prevent free and fair competition, and control prices throughout the national domain. It is no answer to say that this monopoly has in fact reduced the price of friction matches. That

> policy may have been necessary to crush competition. The fact exists that it rests in the discretion of this company at any time to raise the price to an exorbitant degree. Such combinations have frequently been condemned by courts as unlawful and against public policy.

We believe that from the foregoing authorities and others cited in the brief the following conclusions may be drawn:

That every contract or combination between separate and competing concerns having for its purpose or directly and necessarily effecting the control of prices, or of production, or the exclusion of competitors, in addition to being void under the first section of the act, is prohibited by the second section if it tends to a monopoly of trade or commerce among the several States or with foreign nations.

That every contract, combination, or conspiracy, in whatever form, whereby competing corporations or individuals are amalgamated into one concern and brought under a single control, either by purchase of properties or of stock of corporations, if it results in giving to such controlling agency the power to fix prices, determine the amount of production, and suppress competition, and thus effect a monopoly or control of interstate trade and commerce, is also prohibited by the second section of the act as well as by the first.

While not essential to the decision of this case, it may be further stated, as was said by Senator Hoar in the debate over the Sherman Act, that the word

"monopoly" in its technical and legal signification means the sole engrossing to a man's self by means which prevent other men from engaging in fair competition with him; and therefore that a single corporation or individual may, by such means, without combining or conspiring with anyone else, monopolize or attempt to monopolize trade and commerce among the States, and thus fall within the inhibition of the second section of the act.

It is unnecessary in this case to discuss the question of whether mere size of a corporation, mere aggregation of wealth, acquired in the usual, ordinary growth of a business enterprise, is sufficient to constitute a monopoly, for we believe it may be safely stated that a monopoly exists where a great aggregation of capital, like the Standard Oil, is coupled with oppressive use of the power such wealth gives in driving out competitors or controlling the market, by means which may or may not be unlawful or criminal in themselves. To illustrate: The purchase or the acquisition in any manner of a dominating control of plants engaged in a manufacturing business in many parts of the country, and the exercise of this power by unfair and oppressive dealing, controlling the avenues of transportation or obtaining unreasonable rebates and discriminations from the common carriers, necessarily used in the operation of the business, would be evidence of monopoly, as in the Swift case, where it was held that rebates and discriminatory rates, unfair methods of dealing by bidding up the prices of cattle at certain markets, thereby causing an

influx so as to glut the market, and then putting the prices down, and other means of a similar kind, were evidences of monopoly.

In such cases the size of the corporation, the wide extent of its business under the circumstances in which the business is done, gives the power of control. This, as said in the Northern Securities case, is monopoly. To illustrate the point we are now discussing take the condition of the Standard Oil Company to-day. It has substantially 85 per cent of the business of purchasing crude oil in the fields (in many fields it has an absolute monopoly); fully the same proportion in transporting the oil to the refineries and manufacturing the same into the various products of commerce; it has 97½ per cent of the railroad lubricating business; it has about 90 per cent of the domestic marketing and export business, and so on. It appears that the marketing of refined oil and gasoline is done by transportation in bulk in tank cars to hundreds of stations in each State and from these distributed to the retailer and consumer by tank wagons.

Now, all the balance of the business, to wit, 10 per cent, if concentrated in the hands of one company, would not justify the expenditure necessary to erect stations and furnish facilities for the distribution of oil in every State, county, and city in the United States. Ten per cent of the business would not support such marketing facilities. Therefore each independent company must select a limited territory in which it will market its product.

Suppose the Standard Oil Company, being enabled so to do by reason of its enormous aggregated capital and its advantages by the control of pipe lines and the combined plants scattered all over the country, reduces the price in those districts or territories where competitors are selling refined oil and gasoline by these marketing methods, and raises the price in other territories where there is no competition. It could thereby crush out the competition without materially affecting its combined earnings. This is exactly what the testimony shows the Standard Oil Company has done in districts where competitors have secured a considerable percentage of business. The Standard has reduced the price until it has sold its product at a loss. This combination, therefore, has the power to control prices just as effectually as could be done by contracts between competing concerns. In fact, it is more injurious to the public than such contracts. It destroys the independent manufacturer; it prevents the consumer from purchasing at a reasonable price, except in districts where the competition exists and during the life of the independent, which is usually short. The evils of monopoly thus accomplished and the perils to the industrial independence of the people are as great as if the monopolies were obtained by governmental grant, and when Congress declared that no person (including a corporation) should monopolize or attempt to monopolize commerce, without specifying the means, it was intended as a broad and sweeping prohibition that applied to individuals or corpora-

tions monopolizing or attempting to monopolize the commerce by any means whatever. At common law a grant of monopoly made to a single person or corporation was void because it destroyed the freedom of trade, discouraged labor and industry, which should be free to all the subjects of the realm. (Case of Monopolies, 6 Coke's Reports, p. 159; *Butchers Union* v. *Crescent City Company*, 111 U. S., 754.) In the latter case, Mr. Justice Field, in writing the opinion of the court, held that it was not within the power of the legislature of Louisiana to grant an irrevocable right to the exclusive pursuit of a lawful calling. He said:

> All grants of this kind are void at common law, because they destroy the freedom of trade, discourage labor and industry, restrain persons from getting an honest livelihood, and put it in the power of the grantee to enhance the price of commodities. They are void because they interfere with the liberty of the individual to pursue a lawful trade or employment.

It was the evil resulting from the control of commerce tending to monopoly against which Congress was legislating, and not any particular means by which the same might be accomplished. Did not Congress have in mind in passing this act the manner in which a few individuals had attempted to monopolize the commerce of the country? We are not invoking a new principle against an old device, but an old principle against a new device. Principles are everlasting; devices change.

In the case at bar we need not go to this extent, for by whatever means these various corporations have been aggregated they constitute a combination within the first section of the act, the effect of which is to place in the company the power to suppress competition, to control the supply, and to regulate the prices. In addition to this the company has used various unfair means to obtain a monopoly.

If the antitrust act is to be made effective, if monopoly is to be stopped, if corporations or holding companies are not to be permitted through their aggregate wealth and power to control all the industries of the country, the court must adopt a broad and reasonable construction of this act which will not permit monopoly in whatever form it may be organized; for if it is possible to control the commerce of the country and suppress competition by acquisition of stock interests in corporations engaged in a given business, or by combining all of the capital in one concern through purchase or otherwise, it is perfectly idle to maintain this act merely as inhibiting the less effectual method of monopolization by means of contracts between independent concerns to limit prices, divide territory, or to restrict output, or combinations with the same object.

Freedom of contract, the individual freedom of the citizen to acquire property and invoke the protection of the law in defense of his ownership, of course can not be too highly valued or protected with too scrupu-

lous care. But individual aggrandizement, or the combination of wealth, or corporate acquisition may go to that extent where the individual right and freedom of the citizen may be in danger. It is of the highest importance in the preservation of society, in the development and elevation of the race, that the right to earn a livelihood, to engage in any commerce, employment, or labor be kept free and untrammeled. It is not sufficient that the citizen be given merely an opportunity to earn a livelihood; the avenues of commerce and trade should be kept open. The man who has constantly before him the prospect of always being an employee in a subordinate position, who can never rise above it, who has no prospect of being a proprietor, who can not enter the field of competition in industry, is not in a position to develop those faculties of independence and enterprise which make the highest type of man.[a]

These propositions may be said not to be open for discussion for the reason that Congress has declared for freedom of trade against all restraints and monopolies; but the effectiveness of laws depends upon their interpretation and execution. The people have expressed their will, and Congress has exercised its power by declaring that all monopolies in restraint of trade shall be void. It is, as it always has been, for the courts to construe this language and to enforce this law.

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[a] *State* v. *Standard Oil Co.* (49 Ohio St., 137). Justice Peckham in *Freight Association case* (166 U. S., 324).

These considerations are important when we come to apply the law to the various devices by which monopoly or restraint of trade is attempted.

If the intent is clear to monopolize any part of the commerce of the United States, the scheme is void in whatever form the action is taken.

This proposition does not militate against the right of any party to acquire property for legitimate purposes. The right of liberty and property guaranteed by the Constitution, which has been construed to include the right to make contracts and to acquire property, means that acquisition of property which is innocent and not made with the intention to violate the laws of the land. Each must be determined by its own circumstances and conditions. The oft repeated argument that this construction of the law prevents the formation of partnerships and the legitimate consolidation of business enterprises is fallacious; for the reason that such construction has no application where an enterprise is formed with the honest and legitimate intent to pursue a lawful business and not go beyond the bounds of legitimate combination or directly or substantially suppress competition. But whenever that acquisition is a mere cloak to cover the intention of monopolizing commerce, or for the purpose of using it as a weapon to strike down competition, it is illegal. It follows from this that the acquisition of the same property might under some circumstances be legal while under other circumstances it would be illegal.

Again, it is urged in this case that monopoly can only occur when a person or corporation has unlawfully prevented others from engaging in business, and that no monopoly can arise from the mere acquisition by the purchase of property or established business, although that purchase may give control of all or substantially all the manufactured product in one line of business. The question is frequently asked: Is it illegal for an individual to purchase all of the manufacturing plants in one branch of business in the United States? It is of course unnecessary to argue that question in this case, and the condition will probably never arise. As has often been pointed out, the span of human life is too short and uncertain, and individual wealth is not great enough for any length of time to control by purchase all or any one of the great industries of the country. It is different, however, with corporations. They are the creation of the legislature, the gift of sovereign authority, whereby there may be amalgamated the wealth and labor of thousands of people in perpetual combination, controlled of necessity by a few men, thereby consolidating wealth and insuring perpetuity, and removing the uncertainties of human life and those arising from disagreement of individuals held together merely by common understanding.

III.

IF THE COURT FINDS THIS COMBINATION TO BE IN RESTRAINT OF TRADE AND A MONOPOLY, IT IS AUTHORIZED BY SECTION 3 TO ENJOIN THE SAME AND HAS PLENARY POWER TO MAKE SUCH DECREE AS IS NECESSARY TO ENFORCE THE TERMS AND PROVISIONS OF THE ACT.

Northern Securities Co. v. *United States*, 193 U. S., 336, 337, 344.

United States v. *Swift & Co.*, 196 U. S., 211.

United States v. *Marigold*, 9 How., 560–566.

Crutcher v. *Kentucky*, 141 U. S., 57.

In re Rapier, 143 U. S., 110.

The Lottery case, 188 U. S., 321.

United States v. *General Paper Co.*, opinion of Judge Sanborn in settling the decree; not reported.

United States v. *American Tobacco Co.*, 164 Fed., 700.

Chicago, Rock Island & Pacific R. R. Co. v. *Union Pacific R. R. Co.*, 47 Fed., 15, 26.

We will first discuss the power of the court, under the Constitution and the Sherman Act, to enjoin the defendants from engaging in interstate or foreign commerce in petroleum and its manufactured products during the continuance of the combination and monopoly. We submit the court has such power.

In the Northern Securities case Mr. Justice Harlan said, at page 344:

> All will agree that if the antitrust act be constitutional, and if the combination in

> question be in violation of its provisions, the courts may enforce the provisions of the statute by such orders and decrees as are necessary or appropriate to that end and as may be consistent with the fundamental rules of legal procedure.

In the *Debs case* (158 U. S., 582) it was said:

> The entire strength of the nation may be used to enforce in any part of the land the full and free exercise of all national powers and the security of all rights intrusted by the Constitution to its care. The strong arm of the National Government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises, the army of the nation and all its militia are at the service of the nation to compel obedience to its laws.

In *Chicago, Rock Island & Pacific R. R. Co.* v. *Union Pacific R. R. Co.* (47 Fed., 15, 26) Mr. Justice Brewer, circuit judge, replying to an argument that there was no precedent for a decree, said:

> * * * I believe most thoroughly that the powers of a court of equity are as vast, and its processes and procedure as elastic, as all the changing emergencies of increasingly complex business relations and the protection of rights can demand. * * * The powers and processes of a court of equity are equal to any and every emergency. They are potent to protect the humblest individual from the oppression of the mightiest corporation; to protect every cor-

poration from the destroying greed of the public; to stop state or nation from spoliating or destroying private rights; to grasp with strong hand every corporation and compel it to perform its contracts of every nature and do justice to every individual.

In *Gibbons* v. *Ogden* Chief Justice Marshall said:

> If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions of the exercise of the power as are found in the Constitution of the United States.

Were this but a single government and the power to regulate the commerce of the country vested in Congress, we know of no provision of the Constitution of the United States that limits that power to mere regulation of the carriage of merchandise and does not permit Congress, when in its judgment there arises a just cause, to inhibit it altogether.

In *Crutcher* v. *Kentucky* (141 U. S., 57) it was said:

> It has been frequently laid down by this court that the power of Congress over interstate commerce is as absolute as it is over foreign commerce. * * * No difference is perceivable between the two.

See also *Brown* v. *Houston* (114 U. S., 622, 630).

The recognized powers as to foreign commerce, such, for instance, as laying an embargo upon the products of other nations in a time of peace, and the power to forbid and punish introduction of coins of foreign nations (*U. S.* v. *Marigold*, 9 How., 560, 566), illustrate congressional power to forbid transportation of commodities from State to State under circumstances requiring such prohibition in the national interest.

In *United States* v. *Marigold* (*supra*) Justice Daniel, delivering the opinion, said:

> Congress are, by the Constitution, vested with the power to regulate commerce with foreign nations; and, however, at periods of high excitement, an application of the terms "to regulate commerce" such as would embrace absolute prohibition may have been questioned, yet, since the passage of the embargo and nonintercourse laws and the repeated judicial sanctions those statutes have received, it can scarcely at this day be open to doubt that every subject falling within the legitimate sphere of commercial regulation may be partially or wholly excluded when either measure shall be demanded by the safety or by the important interests of the entire nation.

It may be as necessary in the demand of public interest to inhibit commerce between States as with foreign nations. The power of complete regulation of itself must include the power of inhibition. Some power must judge when commerce should be per-

mitted and the rules by which the same should be governed, but if Congress may only regulate but not prohibit, its power over commerce is not plenary, as has often been said by this court. We submit that, when Congress is legislating under its admitted power over interstate commerce, it alone may judge whether a particular commerce is injurious to the public interest or not, and the remedy, if any, of the people against the abuse of such power must be in the election of members of Congress who will obey their will.

In the case of *In re Rapier* (143 U. S., 110) the court said (p. 134):

> The argument that there is a distinction between mala prohibita and mala in se, and that Congress might forbid the use of the mails in promotion of such acts as are universally regarded as mala in se, including all such crimes as murder, arson, burglary, etc., and the offense of circulating obscene books and papers, but can not do so in respect of other matters which it might regard as criminal or immoral, but which it has no power itself to prohibit, involves a concession which is fatal to the contention of the petitioners, since it would be for Congress to determine what are within and what without the rule; but we think there is no room for such a distinction here, and that it must be left to Congress in the exercise of a sound discretion to determine in what manner it will exercise the power it undoubtedly possesses.

In the *Joint Traffic Association case* (171 U. S., 505, 573) the court said that it need not inquire whether the method adopted in a particular instance was the best or only means of regulating the business; that the question was "one of power only and not of policy."

In the *Northern Securities case* (193 U. S., 337) Mr. Justice Harlan said:

> As in the judgment of Congress the public convenience and the general welfare will be best subserved when the natural laws of competition are left undisturbed by those engaged in interstate commerce, and as Congress has embodied that rule in a statute, that must be, for all, the end of the matter, if this is to remain a government of laws and not of men.

See also *Beebe* v. *State* (6 Ind., 501, 528), *Johnson* v. *Commonwealth* (1 Bibb., 603), *Flint River Steamboat Co.* v. *Foster* (5 Ga., 194), *State* v. *Kruttschnitt* (4 Nev., 178), *Walker* v. *Cincinnati* (21 Ohio St., 14), *Hills* v. *Chicago* (60 Ill., 86), *Ballentine* v. *Mayor, etc.* (15 Lea, 633), *State* v. *Traders' Bank* (6 Sou. Rep. (La.), 582).

Again, in the Northern Securities case, the court said (pp. 350, 351, 352):

> The law, this court said in *United States* v. *Lee* (106 U. S., 196, 220), is the only supreme power in our system of government. And no higher duty rests upon this court than to enforce, by its decrees, the will of the legislative department of the Government, as expressed in a statute, unless such statute be

plainly and unmistakably in violation of the Constitution. If the statute is beyond the constitutional power of Congress, the court would fail in the performance of a solemn duty if it did not so declare. But if nothing more can be said than that Congress has erred—and the court must not be understood as saying that it has or has not erred—the remedy for the error and the attendant mischief is the selection of new Senators and Representatives, who, by legislation, will make such changes in existing statutes, or adopt such new statutes, as may be demanded by their constituents and be consistent with law. * * *

But even if the court shared the gloomy forebodings in which the defendants indulge, it could not refuse to respect the action of the legislative branch of the Government if what it has done is within the limits of its constitutional power. The suggestions of disaster to business have, we apprehend, their origin in the zeal of parties who are opposed to the policy underlying the act of Congress or are interested in the result of this particular case; at any rate, the suggestions imply that the court may and ought to refuse the enforcement of the provisions of the act if, in its judgment, Congress was not wise in prescribing as a rule by which the conduct of interstate and international commerce is to be governed that every combination, whatever its form, in restraint of such commerce and the monopolizing or attempting to monopolize such commerce shall be illegal. These, plainly, are questions as to the policy of legislation which belong to

> another department, and this court has no function to supervise such legislation from the standpoint of wisdom or policy. We need only say that Congress has authority to declare, and by the language of its act, as interpreted in prior cases, has, in effect, declared that the freedom of interstate and international commerce shall not be obstructed or disturbed by any combination, conspiracy, or monopoly that will restrain such commerce by preventing the free operation of competition among interstate carriers engaged in the transportation of passengers and freight. This court can not disregard that declaration unless Congress, in passing the statute in question, be held to have transgressed the limits prescribed for its action by the Constitution. But, as already indicated, it can not be so held consistently with the provisions of that instrument.

If power exists, it is to be assumed that legislative discretion has been properly exercised. (Cooley Const. Lim., 6th ed., 220; *People* v. *Lawrence*, 36 Barb., 177; *People* v. *N. Y. Cent. R. Co.*, 34 Barb., 123; *Baltimore* v. *State*, 15 Md., 376; *Goddin* v. *Crump*, 8 Leigh, 154.)

No more concise and comprehensive rule has been stated than by this court in *Soon Hing* v. *Crowley* (113 U. S., 703), where it was said that courts can not inquire into legislative motives "except as they may be disclosed on the face of the acts, or be inferable from their operation considered with reference to the condition of the country and existing legislation."

The true test of constitutionality of a statute is its purpose. It is wholly immaterial whether the restraint or monopolization of interstate commerce, against which the Sherman Act is aimed, is a new or old form of these evils.

Upon the relative importance of public and private interests in such a case the following passage from the opinion in the Northern Securities case is in point:

> The combination here in question may have been for the pecuniary benefit of those who formed or caused it to be formed. But the interests of private persons and corporations can not be made paramount to the interests of the general public. Under the Articles of Confederation commerce among the original States was subject to vexatious and local regulations that took no account of the general welfare. But it was for the protection of the general interests, as involved in interstate and international commerce, that Congress, representing the whole country, was given by the Constitution full power to regulate commerce among the States and with foreign nations. (193 U. S., 352.)

It seems to us that the Lottery case is conclusive of the question at bar. In that case it was urged that Congress had power to regulate but not prohibit. The court said (188 U. S., 354):

> But it is said that the statute in question does not regulate the carrying of lottery tickets from State to State, but by punishing those who cause them to be so carried, Congress in effect prohibits such carrying; that in respect

of the carrying from one State to another of articles or things that are, in fact, or according to usage in business, the subject of commerce, the authority given Congress was not to *prohibit*, but only to *regulate*. This view was earnestly pressed at the bar by learned counsel, and must be examined.

It is to be remarked that the Constitution does not define what is to be deemed a legitimate regulation of interstate commerce. In *Gibbons* v. *Ogden* it was said that the power to regulate such commerce is the power to prescribe the rule by which it is to be governed. But this general observation leaves it to be determined, when the question comes before the court, whether Congress, in prescribing a particular rule, has exceeded its power under the Constitution. While our Government must be acknowledged by all to be one of enumerated powers (*McCulloch* v. *Maryland*, 4 Wheat., 316, 405, 407), the Constitution does not attempt to set forth all the means by which such powers may be carried into execution. It leaves to Congress a large discretion as to the means that may be employed in executing a given power. The sound construction of the Constitution, this court has said, "must allow to the National Legislature that discretion with respect to the means by which the powers it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate,

which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." (4 Wheat., 421.)

We have said that the carrying from State to State of lottery tickets constitutes interstate commerce, and that the regulation of such commerce is within the power of Congress under the Constitution. Are we prepared to say that a provision which is, in effect, a *prohibition* of the carriage of such articles from State to State is not a fit or appropriate mode for the *regulation* of that particular kind of commerce? If lottery traffic, *carried on through interstate commerce*, is a matter of which Congress may take cognizance and over which its power may be exerted, can it be possible that it must tolerate the traffic, and simply regulate the manner in which it may be carried on? Or may not Congress, for the protection of the people of all the States, and under the power to regulate interstate commerce, devise such means, within the scope of the Constitution and not prohibited by it, as will drive that traffic out of commerce among the States?

It is worthy of note that to sustain this power the court cited the Sherman Antitrust Act as "*an illustration of the proposition that regulation may take the form of prohibition*," and cited authorities to show that the prohibitory clauses of this act had been sustained in the Joint Traffic cases and in the Addyston Pipe case. (See p. 359 of the opinion.)

It was urged in this case (p. 362):

> that if, in order to suppress lotteries carried on through interstate commerce, Congress may exclude lottery tickets from such commerce, that principle leads necessarily to the conclusion that Congress may arbitrarily exclude from commerce among the States any article, commodity, or thing, of whatever kind or nature or however useful or valuable, which it may choose, no matter with what motive, to declare shall not be carried from one State to another.

The court said it would be time enough to consider the constitutionality of such legislation when occasion should arise, but suggested that the power to regulate commerce can not be deemed an arbitrary power, since it is subject to such limitations and restrictions as are prescribed by the Constitution. That is, where private property is protected by other provisions of the Constitution, the commerce clause will not be so construed as to override those provisions; for instance, to override the provision that private property shall not be taken without due process of law. The court said:

> There is probably no governmental power that may not be exerted to the injury of the public. If what is done by Congress is manifestly in excess of the powers granted to it, then upon the courts will rest the duty of adjudging that its action is neither legal nor binding upon the people. But if what Congress does is within the limits of its power, and is simply unwise or injurious, the remedy is that

> suggested by Chief Justice Marshall in *Gibbons* v. *Ogden*, when he said: "The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied to secure them from its abuse. They are the restraints on which the people must often rely solely in all representative governments."

It is not necessary in this case to invoke the extreme doctrine that Congress may inhibit all commerce, for Congress has declared that such combinations and monopolies are inimical to the interests of the people, and these acts have been declared valid by the Supreme Court. In other words, private property and contract rights must yield to the greater right of the people to be protected against combinations and conspiracy in restraint of trade.

It seems to us, therefore, there can be no question about the power of Congress to absolutely prohibit interstate commerce being carried on by a combination in restraint of trade or a corporation or corporations engaged in monopoly.

In *Continental Wall Paper Co.* v. *Voight* (212 U. S., 227), this court held that a corporation formed as a combination in restraint of trade and engaged in monopolization of paper trade could not enforce the obligations of a contract for the sale of its products, because such sale was made in violation of the laws

of the United States. If the creditor could not enforce this obligation, if the act of Congress was an absolute inhibition against collecting the consideration for the sale of goods, it seems equally clear that Congress may inhibit the transportation of such goods from State to State. In fact, that is what Congress has done in section 6 of this act, where it has authorized the Government of the United States to seize all property owned under any contract or by any combination or pursuant to any conspiracy mentioned in section 1 of the act and being in course of transportation from one State to another or to a foreign country.

Is it possible that Congress has power to abolish monopolies in interstate commerce, to prevent combinations, contracts, and conspiracies in restraint of such commerce, and yet has no power to inhibit transportation made in pursuance of such conspiracy and in the furtherance of such combination and monopoly?

It has been the chief claim of courts of equity that their powers are adequate to all emergencies to enforce and protect the rights of the people against all invasions, whether of a tyrannical government or the greed and oppression of men.

It will probably be claimed that by the Sherman Act Congress has not conferred power upon the court to enjoin the defendants from engaging in interstate commerce. The first three sections of the act make any contract, combination in the form of trust or

otherwise, or conspiracy in restraint of trade, between the States and foreign nations, and the monopolization or attempt to monopolize such commerce, a criminal act, and provide that every person who shall make such a contract or engage in such combination or conspiracy to restrain commerce, or who shall monopolize or attempt to monopolize commerce, either by the means named in section 1 or otherwise, shall be deemed guilty of a misdemeanor, and, upon conviction, be punished as stated in the act.

Every overt act, therefore, done in furtherance of such a conspiracy is a criminal act. The transportation of property from State to State, and the sale of such property, are overt acts in furtherance of the conspiracy to restrain and monopolize commerce. They are the objects of the combination and monopoly, and every act of transportation and sale is criminal and inhibited by sections 1, 2, and 3, and may be enjoined under the fourth section, which confers upon the courts of the United States jurisdiction to prevent violations of the act. Therefore, the courts may by injunction enforce the provisions of this criminal statute by enjoining the parties from engaging in interstate commerce during the continuance of the combination and monopoly.

That this act also contemplated the absolute inhibition of such commerce is, as we have seen, shown by the sixth section, which permits the additional remedy of seizing and condemning property being transported by any combination or pursuant to any conspiracy under section 1 of the act.

In advance of a decision in this case that this commerce is in violation of the Sherman Act, the Government has hesitated to invoke the drastic remedy of section 6, but if an adequate remedy can not be granted by the courts by injunction against such commerce, it would clearly be the duty of the Government to invoke the remedy thus provided. However that may be, it may be doubted whether any other remedy except injunction is adequate to stop the encroachments of such combinations and trusts. Other remedies have been tried and have failed. Either the Sherman Act should be repealed or it should be enforced in a manner to make the people respect it.

The provision of the decree declaring it a combination in restraint of trade and a monopoly, and enjoining the Standard Oil Company of New Jersey from exercising any control over the defendant corporations by stock ownership or otherwise, is of course warranted by the decisions of the Supreme Court of the United States in the Northern Securities case and various other cases. But this would be ineffectual if the defendants could immediately thereafter, and in evasion of this decree, cause the defendant corporations to convey their physical properties to the Standard Oil Company of New Jersey, or organize some other corporation and convey the properties to it, or transfer the control of the stocks to some other corporation, or evade this decree by any other combination or conspiracy to accomplish the same purpose.

It seems, therefore, that the degree should be broad enough to make it effective. If the court is restricted at this time simply to enjoining the continuance of this specific form of combination disclosed by the evidence, the effect of the decree would be nugatory and the number of suits necessary to enforce the law would be limited only by the number of successive combinations of a similar character which those seeking to violate the law might see fit to make. Although it is reasonable and proper that the defendant "should be informed, as accurately as the case permits, of what they are forbidden to do," and although the injunction should not, as was intimated by the Supreme Court in the case of *Swift & Co.* v. *The United States*, "run generally against combinations in restraint of trade or to monopolize trade," and thus become a mere sweeping injunction to obey the law, the decree is not open to objection upon these grounds. The nature of the charge contained in the bill does not admit of any misunderstanding. The fact that the bill avers this combination and conspiracy to have been effectuated and carried out under a certain specified guise and form is not of particular consequence in this connection, for, as Mr. Justice Holmes said in the Swift case:

> A bill in equity is not to be read and construed as an indictment would have been read and construed a hundred years ago, but it is to be taken to mean what it fairly conveys to a dispassionate reader by a fairly exact use of English speech.

The decree in this case is not in principle different from that finally approved by the Supreme Court in the Swift case. There the defendants were enjoined from entering into, taking part in, or performing any contract, combination, or conspiracy the purpose or effect of which would be, as to trade and commerce in fresh meats between the several States and Territories, a restraint of trade in violation of the Sherman law, either by directing or requiring their agents to refrain from bidding against each other in the purchase of live stock, or by collusively raising or lowering prices or fixing uniform prices at which meats should be sold, or by joint regulation of the quantities of meats shipped to markets, or by establishing rules for giving credit to dealers "the effect of which rules will be to restrict competition," or by imposing uniform charges for cartage and delivery of meats to dealers, "the effect of which will be to restrict competition;" and also from violating the provisions of the act by combining or conspiring together to monopolize any part of the trade by demanding or receiving rebates from railway companies. This court struck out of the injunction the general words "or by any other method or device, the purpose and effect of which is to restrain commerce as aforesaid," holding that these words amounted to a sweeping injunction to obey the law merely, and did not inform the defendants, as accurately as the case permitted, of what they were forbidden to do.

Suppose in the Swift case it had appeared that the defendants had formed a conspiracy like the Standard

Oil holding company, whereby through stock ownership it controlled all the corporations engaged in commerce throughout the United States, could the court not prohibit the same control by other like means, and the evasion of the decree by means alike in their effect? Would it be more general than the decree which was entered?

In the exercise of this power of injunction, the eyes of the court will not be turned solely upon that which has been done, but will look to the possibility or probability of future action by the same parties in the light of their past conduct. All that the Government asks in this case is that a decree be entered which shall be effective to prevent these defendants from agreeing again among themselves so as to bring about the same result that they accomplished before, namely, the suppression of competition among themselves. In principle it makes no difference whether such an agreement provides for the creation of a corporate selling agency, a holding company, a uniform understanding between stockholders whereby their companies shall be operated in harmony, or by some other means by which all of these companies will be held together and competition cease and monopoly be secured.

Other writs of injunction granted under similar circumstances further illustrate the principle. In the *Debs case* (158 U. S., 564) the injunction commanded the defendants "and all persons combining and conspiring with them and all other persons whomsoever absolutely to desist and refrain from in any way or

manner interfering with, hindering, obstructing, or stopping any of the business" of certain railroads, and after incorporating a large number of forbidden acts, the injunction concludes—

> and from doing any act whatever in furtherance of any conspiracy or combination to restrain either of said railroad companies or receivers in the free and unhindered control and handling of interstate commerce over the lines of said railroads, and of transportation of persons and freight between and among the States.

The final decree entered in the case of *United States* v. *Trans-Missouri Freight Association*, after the decision rendered by this court, reported in 166 U. S., 290, provided for a dissolution of the association, the annulment of the contract or memorandum of agreement among the parties thereto, and an injunction prohibiting the various railroads concerned—

> from further agreeing, combining, conspiring, or acting together to maintain rules, regulations, and rates for carrying freight upon their several lines of railroad so as to hinder trade and commerce between the States and Territories of the United States; and that said defendants last named, and each of them, be, and they hereby are, perpetually enjoined and prohibited from entering into or continuing in any combination, association, or conspiracy to deprive the people engaged in trade and commerce between and among the States and Territories of the United States of such facilities and rates and charges of freight transportation as will be afforded by free and unre-

> stricted competition between the several lines of railroad owned or operated by said last-named defendants.

The decree also in terms enjoined the same defendants from agreeing, combining, conspiring, or acting together to monopolize the freight traffic arising from the trade and commerce between the States and Territories of the United States.

The decree in the Trans-Missouri case is broader if anything than the decree entered in the case at bar.

The decree recently entered by Judge Morrow in the Circuit Court of the United States for the Northern District of California in the case of *United States* v. *The Otis Elevator Company*, another proceeding brought under the Sherman law, enjoined the defendants from—

> entering into, making, executing, or performing, directly or indirectly, expressly or impliedly, any agreement, contract, or understanding to deprive the people of the city of San Francisco or of the State of California, or of any State or Territory of the United States, or of the District of Columbia of such facilities, rates, and prices for elevators, elevator machinery, or appliances produced, manufactured, installed, sold, or shipped between the divers States, Territories, and the District of Columbia as will be afforded by free and unrestricted competition between the defendant corporations in elevators, elevator machinery, and appliances manufactured, sold, installed,

and used within the divers States and Territories of the United States and the District of Columbia.

In all of the decrees that we have been able to find, the court has invariably not only annulled existing contracts in restraint of trade, and enjoined the perpetuation of the particular form of combination disclosed by the bill and proofs, but has been careful to make the injunction broad enough to strike at the root of the evil complained of, namely, the formation of any combination or conspiracy the effect of which would be to deprive the people of the benefits of free and unrestricted competition among the defendants to the suit.

IV.

EVIDENCE THAT THE DEFENDANT COMPANIES OBTAINED REBATES AND DISCRIMINATORY RATES IN THE TRANSPORTATION OF THEIR PRODUCT AS AGAINST THEIR COMPETITORS AND ENGAGED IN OPPRESSIVE METHODS OF COMPETITION, THEREBY DESTROYING THE SMALL MANUFACTURERS AND DEALERS THROUGHOUT THE COUNTRY, IS MATERIAL IN THIS CASE.

We have in volume 2 of the brief set forth in detail the facts substantiated by the testimony showing not only the rebates and discriminatory rates received by the Standard Oil combination during its formative period, but during the last ten years, whereby the Standard was enabled to bring a large part of the concerns into the combination and to crush out and eliminate from the field of competition the principal part of the balance. Such testimony was held to be material in the case of the *United States* v. *Swift & Co.* (196 U. S., 211), and needs no further comment.

As to the unfair methods of competition and oppression by the Standard Oil Company, the facts and the testimony to substantiate these charges are set forth in detail in volume 2 of this brief, pages 427 to 641. In substance this shows a system of lowering the prices, where competitors are doing business, below the cost of the product, while keeping up or raising the prices in other parts of the country until the competitor is either eliminated or his business brought

within a compass so that the Standard Oil Company can control it; of obtaining secret information as to competitive business, largely through bribing railway employees, and using said secret information to procure countermanding of orders of independents and to facilitate their system of price cutting and oppression; of the use of so-called bogus independent companies—that is, companies held out by the Standard Oil Company as independent—whose operations are predatory and oppressive, principally used to drive out competitors; and various other means shown in the testimony.

The question is, Is this testimony competent? Price cutting, as between two merchants, of course, is legitimate competition, and as a mere abstract proposition there is nothing illegal in it.

Why is it not material, in a case of attempt to monopolize commerce, to show the facts which universally follow such attempts? There is no use of closing our eyes to the fact that after a corporation, by combining separate and individual plants all over the country in no way related to each other except that they are engaged in the same business, has acquired sufficient power and widespread extent of business, it may, without loss to itself, drive out its competitors by cutting prices where the competitor is doing business and by other oppressive forms of dealing, while making up its losses in parts of the country where there is no competition. It is the simplest and most effective means of driving out

the small dealer or manufacturer, who has sufficient capital and business ability to engage successfully in commerce but for the methods used against him, and the necessary effect of such action is to drive out all competition and center in one corporation all industry. Mr. Justice Peckham clearly states this in *United States* v. *Freight Association* (166 U. S., 323). In speaking of changes from the stagecoach and canal boats to railroads and the introduction of improved machinery whereby conditions have been changed and a large number of men have been compelled to seek other avenues of livelihood, he states that these misfortunes are the necessary accompaniment of great industrial changes and then adds:

> It is wholly different, however, when such changes are effected by combinations of capital whose purpose in combining is to control the production or manufacture of any particular article in the market, and by such control dictate the price at which the article shall be sold, the effect being to drive out of business all the small dealers in the commodity and to render the public subject to the decision of the combination as to what price shall be paid for the article. In this light it is not material that the price of an article may be lowered. It is in the power of the combination to raise it, and the result in any event is unfortunate for the country by depriving it of the services of a large number of small but independent dealers who were familiar with the business and who had spent their lives in it, and who supported themselves and their families from

> the small profits realized therein. Whether they be able to find other avenues to earn their livelihood is not so material, because it is not for the real prosperity of any country that such changes should occur which result in transferring an independent business man, the head of his establishment, small though it might be, into a mere servant or agent of a corporation for selling the commodities which he once manufactured or dealt in, having no voice in shaping the business policy of the company and bound to obey orders issued by others. Nor is it for the substantial interests of the country that any one commodity should be within the sole power and subject to the sole will of one powerful combination of capital.

Senator Sherman, in the discussions which preceded the enactment of the Sherman Act, cited cases of oppression by the Standard Oil Company and said:

> The sole object of such a combination is to make competition impossible. It can control the market, raise or lower prices as will best promote its selfish interest, reduce prices in a particular locality, and break down competition and advance prices at will where competition does not exist. * * *
>
> It is this kind of a combination we have to deal with now.

We do not wish to be understood as discouraging enterprise or as taking a position against legitimate competition, but if the Sherman Act means anything in this country it means a monopoly acquired by such methods of competition as this. Unless it is enforced the small

corporation or individual who wishes to engage in business will have absolutely no opportunity at all. This testimony is valuable as showing the intention of the Standard Oil Company to monopolize the commerce in oil throughout the United States. In many districts it has an absolute monopoly. We mean by absolute monopoly that in those districts it does all of the business and has eliminated every competitor. Practically this is the case throughout the Rocky Mountain country and most of the Pacific coast States. The percentage of independent business throughout the entire Southern States is very small. Moreover, where there is competition the competitors are usually strictly under the control of the Standard, in that they must, in order to be allowed to do business, sell oil at practically the price the Standard dictates and confine themselves to a small percentage of the trade.

V.

IN CASES OF CONSPIRACY IT IS ALWAYS PERMISSIBLE TO ALLEGE AND PROVE THE HISTORY AND VARIOUS STEPS CULMINATING IN THE FINAL CONSPIRACY, EVEN THOUGH THE PREVIOUS STEPS WERE SEPARATE AND DISTINCT OFFENSES, IF THEY TEND TO THROW LIGHT ON THE PRESENT CONSPIRACY AND TO SHOW THE INTENT WITH WHICH THE FINAL ACTS WERE COMMITTED.

Wharton on Criminal Ev., sec. 32.
Greenleaf on Ev., sec. 111.
8 Cyc., pp. 677, 678, 684.
Swift & Co. v. *United States*, 196 U. S., 395.
United States v. *Greene*, 115 Fed., 344.
Lincoln v. *Claflin*, 7 Wall., 132.
N. Y. Mut. Life Ins. Co. v. *Armstrong*, 117 U. S., 598.
Moline-Milburn Co. v. *Franklin*, 37 Minn., 137, and cases cited.
Commonwealth v. *Scott*, 123 Mass., 222.
Carroll v. *Commonwealth*, 84 Pa. St., 107.
Spies v. *People*, 122 Ill., 1.
State v. *McCahill*, 72 Iowa, 111.
Tarbox v. *State*, 38 Ohio St., 581.
Commonwealth v. *O'Brien*, 140 Pa. St., 555.
State v. *Adams*, 20 Kans., 311.
Wood v. *United States*, 16 Peters, 360.
Nelson v. *State*, 37 S. W. (Tex.), 320.
Ford v. *State*, 34 Ark., 650.
Card v. *State*, 109 Ind., 415; 9 N. E., 591.
State v. *Greenwade*, 72 Mo., 298.
People v. *Saunders*, 25 Mich., 119.

Swan v. *Commonwealth*, 104 Pa. St., 218.
Lorenz v. *United States*, 24 App. D. C., 337.
Smith v. *Schwed*, 9 Fed., 483.
People v. *Van Tassel*, 51 N. E. (Court of App., N. Y.), 274.
Davis v. *United States*, 107 Fed., 753.
Kelley et al. v. *People*, 55 N. Y., 565.
Mussina v. *Clark*, 17 Abb. Pr. (N. Y.), 188.
Malony v. *Dows*, 15 How. Pr. (N. Y.), 261.
United States v. *Lancaster*, 44 Fed., 896.
Mussel Slough Case, 5 Fed., 680.
United States v. *Newton*, 52 Fed., 275.
Reilley v. *United States*, 106 Fed., 896.

In *State* v. *McCahill* (72 Iowa, 111; 33 N. W., 599) it is held that on the trial of one of a number of conspirators for murder committed in the execution of the conspiracy it was competent to show the history of the conspiracy from the beginning, even though a considerable part of it occurred before any acts of violence were committed on the part of anyone and before it was certain that any such acts were contemplated, for "*the character and purpose of the combination before it became unlawful had a tendency to shed light on the facts afterwards.*"

In 8th Cyc. of Law and Proc., page 684, under the head of "Conspiracy," it is said:

> Where the guilt of a party depends upon the intent, purpose, or design with which an act is done, or upon his guilty knowledge thereof, collateral facts in which he bore a principal part may be examined into for the purpose of establishing such guilty intent, design, purpose, or knowledge. It is sufficient that such

> collateral facts have some connection with each other as a part of the same plan, or as induced by the same motive, and it is immaterial that they show the commission of other crimes. The evidence in a conspiracy is wider than perhaps in any other case. Taken by themselves, the acts of a conspiracy are rarely of an unequivocally guilty character, and they can only be properly estimated when connected with all the surrounding circumstances.

In the case of *Swift* v. *United States, supra*, the petition set forth many of the means by which the commerce was claimed by the Government to have been restrained. Mr. Justice Holmes said:

> The general objection is urged that the bill does not set forth sufficient definite or specific facts. This objection is serious, but it seems to us inherent in the nature of the case. The scheme alleged is so vast that it presents a new problem in pleading. If, as we must assume, the scheme is entertained, it is, of course, contrary to the very words of the statute. Its size makes the violation of the law more conspicuous, and yet the same thing makes it impossible to fasten the principal fact to a certain time and place. The elements, too, are so numerous and shifting, even the constituent parts alleged are, and from their nature must be, so extensive in time and space, that something of the same impossibility applies to them.

In the case of *United States* v. *Greene* (115 Fed., 344), the indictment alleged a conspiracy extending

over a term of years from 1891 to and including 1897, culminating in the conspiracy for which the defendants were indicted. The indictment set forth in great detail the entire history of the conspiracy, and the overt acts performed by each of the defendants, including copies of contracts and documents. The indictment was sustained on demurrer. The court followed the well-established rule that in alleging a conspiracy, either in a civil or a criminal action, the pleader may state the entire history of the conspiracy and each overt act of the parties. To the same effect is *Lorenz* v. *United States* (24 App. D. C., 337).

New York Life Ins. Co. v. *Armstrong* (117 U. S., 599) was a suit brought against a life insurance company by the assignee of a policy of life insurance, which policy had been secured at the instigation of the assignee, to recover on the policy after the death of the assured, and it was held that evidence was admissible to show that it was plaintiff's purpose to defraud, by showing that he effected insurances upon the life of the assured in other companies at or about the same time for a like purpose. Mr. Justice Field said:

> So, on an indictment for a conspiracy to create public discontent and disaffection, proof is admissible against the prisoner that at another meeting held for an object professedly similar, at which the prisoner was chairman, resolutions were passed of a character to create such discontent and disaffection. "In

> short," said the learned justice, "wherever the intent or guilty knowledge of a party is a material ingredient in the issue of a case, these collateral facts, tending to establish such intent or knowledge, are proper evidence. In many cases of fraud it would be otherwise impossible satisfactorily to establish the true nature and character of the act." Many other authorities might be cited to the same purport.

Moline-Milburn Co. v. *Franklin* (37 Minn., 137) was an action to recover possession of a lot of buggies obtained from plaintiff by defendant in exchange for a promissory note, by means of false representations as to the solvency of the maker of the note. Evidence was admitted to show that the defendant had on the same or the next day passed off another of the same lot of worthless notes under circumstances showing that he knew it to be a fraud. The court (Mitchell, J.) said:

> If this had been a separate and distinct fraud it would have been clearly inadmissible; but it is evident that the acts of defendant and Zimmerman in trading one of these notes to plaintiff, and the attempted trade of the other to Stevens, were parts of one fraudulent scheme committed in pursuance of a common purpose. The acts were so connected as to make it apparent that the defendant had a common purpose in both, viz, to get rid of these notes against S. E. Hart & Co. before their insolvency should become known. The

> evidence was therefore admissible for the purpose of proving the motive or intention which actuated the defendant in the transaction under investigation in this case.

In *Commonwealth* v. *Scott* (123 Mass., 222; 25 Am. Rep., 81) it is held that on a prosecution for breaking and entering a bank with intent to commit larceny, testimony of an accomplice of a general conspiracy previously formed between the accused and others to rob banks, in pursuance of which the robbery in question was planned and carried out, together with the acts of the conspirators in making preparations to carry out the robbery, is admissible. The court said:

> It was clearly competent for the Government to show the whole history of the robbery with which the defendants were charged from the inception of the scheme by them to its final consummation. The evidence excepted to tends to show the beginning of the plot or scheme of this robbery in the summer of 1875. The fact of the general conspiracy, formed in 1873, was so connected with this scheme as to make it competent. It tended to explain and make intelligible the testimony of Edson as to the beginning of this scheme, as it accounts for the fact of his reporting to the defendants at Wilkes-Barre and furnishing them with the means of duplicating the keys of the vault lock. * * * The evidence was competent as tending to prove the crime charged, and it is not rendered incompetent because it also tends to prove the commission of other crimes.

In *Carroll* v. *Commonwealth* (84 Pa. St., 107) it is held that to show the motive for a crime it is competent for the Commonwealth to prove the existence of a secret criminal organization, and to show that one division of such organization furnished men to commit murder or a like crime by members of another division. The court said:

> The entire body of the evidence became necessary to show the conspiracy which linked all the prisoners together; to show that they were combined in the most intimate relations, and in a common purpose, * * * and that all these combinations and purposes led directly to the commission of another murder, that of Jones, as the return price of the killing of Yost. * * * The whole network of the evidence is so complicated and so clearly united and connected together in proving the guilt of all the prisoners, and their motives, and the agencies employed, it is not possible to strike out the subsequent facts without destroying to a great extent the unity and relevancy of those which preceded the act. * * * The relevancy of the evidence * * * is made manifest.

In *Spies* v. *People* (122 Ill., 1; 12 N. E., 865), "The Anarchists' case," the prosecution introduced evidence that the defendants were members of a revolutionary society which had for years publicly advocated the overthrow of social order by violent methods. The entire history of this organization and its mode of operation were introduced in evidence, although the matter in issue was a plot result-

ing in a murder on May 3, 1886. The court says (p. 976):

> We do not agree with the position of counsel that the general conspiracy hereinbefore described and the plot of Monday night, May 3, 1886, were two separate conspiracies. The latter was merely the outgrowth and culmination of the former. The latter merely designated the particular mode in which the objects of the former were to be effected. It was competent to show the acts and declarations of the parties to the general conspiracy which preceded and led up to the formation of the special plot of May 3, with a view of understanding the latter.

In *Tarbox* v. *State* (38 Ohio St., 581) it is held that where in a trial upon an indictment it becomes material to prove upon the part of the State that a conspiracy existed between persons jointly indicted, evidence that the same persons were, shortly prior to the time of the alleged crime, engaged in a conspiracy to commit crimes of a similar character is competent. The court said:

> We think it was competent for the purpose of showing a conspiracy between the defendants, and also to show knowledge of the falsity of the representations at the time when made.

In *Ford* v. *State* (34 Ark., 650) it is held that when a man is charged with one crime, it is not competent to prove that he committed others; but a witness to a conspiracy may state "*the whole plan or purpose of the conspirators*" to rob several persons, though it

does not appear that they executed their plan except as to the one for the murder of whom the defendant was indicted.

In *Lorenz* v. *United States* (24 App. D. C., 337) it is held, on page 381, that in all cases where fraud and conspiracy must necessarily be established by circumstantial evidence, a wide range of evidence is permissible.

In *Smith* v. *Schwed* (9 Fed., 483) the action was brought to set aside a judgment by confession, it being alleged to have been in fraud of creditors. The plaintiffs offered to prove another judgment by confession in another State, which it was alleged was also void upon the same ground. The court said:

> The true rule upon this subject is this: It is not competent, for the purpose of showing fraud in a particular transaction, to show that the same party has been guilty of fraud in another separate and independent transaction not in any way connected with the matter in controversy. * * * But, if the transaction sought to be shown in evidence can be connected with the transaction in controversy as evidence of a connected scheme of fraud it is admissible. (*Clark* v. *White*, 12 Pet., 193.) Judged by this rule, I think the evidence tending to show fraud in the Pennsylvania transactions is admissible. The two transactions were manifestly but parts of one scheme.

In *Swan* v. *Commonwealth* (104 Pa. St., 218) the court said:

> To make one criminal act evidence of another, some connection must exist between

> them; that connection must be traced in the general design, purpose, or plan of the defendant, or it may be shown by such circumstances of identification as necessarily tends to establish that the person who committed one must have been guilty of the other. The collateral or extraneous offense must form a link in the chain of circumstances or proofs relied upon for conviction; as an isolated or disconnected fact, it is of no consequence.

Kelley et al. v. *People* (55 N. Y., 565) was a case where the plaintiffs in error had been convicted of the crime of grand larceny, being indicted together. Among the errors assigned were several to the effect that immaterial and irrelevant testimony as to the conspiracy between the parties had been improperly admitted. The court, by Allen, J., said:

> A conspiracy may be proved, as other facts are proved, by circumstantial evidence, and parties performing disconnected overt acts, all contributing to the same result and the consummation of the same offense, may, by the circumstances and their general connection, or otherwise, be satisfactorily shown to be conspirators and confederates in the commission of the offense. * * *
>
> The declarations were not given in evidence to prove the guilt of the parties on trial, and as the declarations of one conspirator against another, but as a part of the res gestæ, a part of the history of the transaction, and as such it was competent.

VI.

A PERSON OR CORPORATION JOINING A CONSPIRACY AFTER IT IS FORMED, AND THEREAFTER AIDING IN ITS EXECUTION, BECOMES FROM THAT TIME AS MUCH A CONSPIRATOR AS IF HE ORIGINALLY DESIGNED AND PUT IT INTO OPERATION.

United States v. *Standard Oil Co.*, 152 Fed., 294 of opinion.

Lincoln v. *Claflin*, 7 Wall., 132.

United States v. *Babcock*, 24 Fed. Cases, 915, No. 14487.

United States v. *Cassidy*, 67 Fed., 698, 702.

The Anarchist Case, 122 Ill., 1.

United States v. *Johnson*, 26 Fed., 682, 684.

People v. *Mather*, 4 Wend., 230.

Under this rule, the decree was properly entered against all of the defendant corporations found to constitute a part of the present combination and engaged in business in the United States, without regard to the time of their organization or the persons by whom organized.

VII

THIS CONSPIRACY WAS A CONTINUING OFFENSE. EVERY OVERT ACT COMMITTED IN FURTHERANCE THEREOF WAS A RENEWAL OF THE SAME AS TO ALL OF THE PARTIES. THE STATUTE OF LIMITATIONS DOES NOT BEGIN TO RUN UNTIL THE COMMISSION OF THE LAST OVERT ACT. NEITHER CAN THE PARTIES CLAIM A VESTED RIGHT TO VIOLATE THE LAW.

Am. & Eng. Enc. of Law (2d ed.), vol. 19, "Limitations of Actions."

United States v. *Greene*, 115 Fed., 343.

Ochs v. *People*, 124 Ill., 399.

Spies v. *People*, 122 Ill., 1.

8 Cyc., p. 678.

State v. *Pippin*, 88 N. C., 646.

United States v. *Bradford et al.*, 148 Fed., 413.

Commonwealth v. *Bartilson*, 85 Pa. St., 489.

People v. *Mather*, 4 Wend., 261.

State v. *Kemp*, 87 N. C., 538.

American Fire Ins. Co. v. *State*, 22 So. (Miss.), 99.

Lorenz v. *United States*, 24 App. D. C., 337.

People v. *Willis*, 23 Misc. (N. Y.), 568.

Raleigh v. *Cook*, 60 Tex., 438.

Commonwealth v. *Gillespie*, 10 Am. Dec. (Pa.), 480.

In the case of *United States* v. *Greene and Gaynor* the court held that it was proper to plead and prove all the circumstances leading up to the final conspiracy, although the conspiracy had its inception many years before.

The case of *Ochs* v. *People* was an indictment in the Cook County Circuit Court against Ochs and several other county commissioners, charging the defendants with the crime of conspiracy to obtain money from Cook County by means of false pretenses. The court, Mr. Justice Sheldon delivering the opinion, said (p. 429):

> The first instruction, as to all the defendants, was faulty and misleading, in telling the jury that the crime of conspiracy was complete and the offense was then committed when the agreement or confederacy was entered into, and that the period of limitation would commence to run from the time of committing the offense. The instruction was calculated to lead the jury erroneously to think that the period of limitation would commence to run from the time a defendant first became a member of the conspiracy, instead of from the time of the commission of the last overt act in furtherance of the object of the conspiracy.

In speaking of the questions of limitations, the learned judge, in the same case, also said:

> As respects Ochs and Wasserman, especially, the question is raised whether the statute of limitations was not a shield as to them, arising from the fact that their terms of office as county commissioners expired December 6, 1885, and perhaps most of the transactions in evidence occurred subsequent to that time, and after they had ceased to be members of the board. The period of limitation here was

eighteen months. The indictment was found April 2, 1887, so that the bar of the statute would apply to all acts committed prior to October 3, 1885. The existence of the conspiracy prior to October 3, 1885, having been satisfactorily established, as we think it was, it is necessary for the avoidance of the bar of the statute to inquire whether there were any overt acts in furtherance of the conspiracy committed by the defendants subsequent to that time. We think the proof of the commission, by all the defendants, of such overt acts subsequent to October 3, 1885, is abundant. The evidence shows, satisfactorily, that Ochs and Wasserman were members of the conspiracy previous to October 3, 1885, and that they adhered to it afterwards, during the whole interval of time to December 6, 1885, by their cooperation as members of the board, with their fellow conspirators, in the passing of these false and fraudulent bills.

In 8th Cyc., page 678, the author states the law as follows:

> In the reception of circumstantial evidence great latitude must be allowed. The jury should have before them every fact which will enable them to come to a satisfactory conclusion. And it is no objection that the evidence covers a great many transactions and extends over a long period of time, provided, however, that the facts shown have some bearing upon and tendency to prove the ultimate fact at issue. But much discretion is left to the trial court in a case depending on circumstantial

evidence, and its ruling will be sustained if the testimony which is admitted tends even remotely to establish the ultimate fact.

In *State* v. *Pippin* (88 N. C., 646) it is held that other offenses, part of the same system, can not be excluded from evidence because sheltered by the statute of limitations. In this case the defendants were charged with adultery during the two years preceding the finding of the indictment, and on the trial to prove the offense evidence was admitted of adultery at a time protected by the statute of limitations.

United States v. *Bradford et al.* (148 Fed., 413, C. Ct. E. Dist. La.) was an indictment for conspiracy to defraud the United States, under section 5440, Revised Statutes. The defendants being found guilty, sued out a writ of error to the Circuit Court of Appeals, and Parlange, J., annexed to the bill of exceptions his reasons for the action complained of in the bill. The first question raised by the bill of exceptions was whether the criminal action was barred by the statute of limitations. In discussing the question, the reasoning of the learned judge is very clear, forcible, and to the point. He in substance held that the conspiracy was a continuing offense; that each overt act of the conspirators or any of them tended to renew the conspiracy; that the limitation was from the last overt act; that the jury had a right to go back to the original conspiracy for the purpose of determining whether it was continued

or renewed and existed and was in operation within the three years. The opinion reviews the authorities with care and ability, and is too long to quote at length, but among other things the court said:

> It is well and fully settled that the commission of an overt act is, per se, a renewal of the conspiracy. (Citing authorities.) * * * It is settled that the jury need not have found that the inception of the conspiracy took place within the three years. They had a right to go back to its origin for the purpose of determining whether it was continued or renewed and existed and was in operation within the three years.

The case of *American Fire Ins. Co.* v. *State* (22 South. (Miss.), 99), cited with approval in *United States* v. *Bradford, supra*, was an indictment for criminal conspiracy under the Mississippi Code. On demurrer to the indictment it was urged that the offense charged was barred by the statute of limitations. The Supreme Court of the State, Whitfield, J., delivering the opinion, said:

> The well-settled doctrine is that every overt act is a renewal of the original conspiracy then and there—a repeating of the conspiracy as a new offense.
>
> * * * * *
>
> But where, in conspiracy, an overt act is done within two years, and said act is but one of a series of acts committed by the parties, evidently in pursuance of a common design and to carry out a common purpose, such

> acts would be evidence, provided they tend to show that the last act was part of the series and the result of an unlawful combination; and such evidence may satisfy a jury of the existence of a conspiracy at the latter period. And this though some of the prior acts may have occurred at a time when, as an independent conspiracy, it would have been barred by the statute; for, as before said, the overt acts are the evidence from which a conspiracy may be inferred.

Lorenz v. *United States* (24 App. D. C., 337) was an appeal from a judgment of conviction of the Supreme Court of the District of Columbia, sitting as a criminal court, entered upon the verdict of a jury finding the defendants guilty on an indictment for an offense against the United States. It is worthy of note in this case that the indictment contained a general recital that on and before 1900 there were in use in the postal service throughout the United States a large number of letter boxes, which were fastened by devices called letter-box fasteners; that there was an Assistant Postmaster-General; that there was a division known as the free-delivery division; what the duties of that division were; and various other matters, giving the details and progress of the conspiracy from its inception. With relation to the wide range of evidence allowed in the trial court, the Court of Appeals said:

> The leading exceptions embraced in the ninth assignment of error, relating to the order of the introduction of evidence of the acts and

statements of the defendants, have been heretofore considered. Of those remaining all that need be said is that the wide range of the evidence concerning the purchase of fasteners, and the receipt and division of the money paid therefor, was no more than has generally been permitted in all cases where fraud and conspiracy must necessarily be established by circumstantial evidence.

With regard to when the statute of limitations begins to run against a conspiracy, the court said:

> The contention on behalf of the appellants is that, if the conspiracy was in fact formed, and a single act in aid of its object committed, more than three years before the finding of the indictment, then the offense was barred by the statute of limitations, and that no other like act or acts committed within three years would amount to a renewal or continuance of the conspiracy so as to remove the bar.
>
> We can not agree with this contention. Undoubtedly, as argued, the conspiracy is the gist of the offense defined in section 5440, Revised Statutes (U. S. Comp. Stat., 1901, p. 3676), though it is not indictable until some act shall have been done by one or more of the conspirators to effect the object of the corrupt agreement. The offense is then complete as to that act, and the statute at once begins to run; but it does not follow that all similar acts thereafter may be committed with impunity. Through the repetition of such acts—overt acts, as they are commonly called—the conspiracy is made a continuing offense. By each

subsequent act it is repeated and entered into anew.

The appellants petitioned the Supreme Court of the United States for a writ of certiorari in this case, which petition was denied.

In *Waters Pierce Oil Co.* v. *Texas* (212 U. S., 86, 107, 108) it was contended that the acts of the legislature of Texas, for the violation of which proceedings were brought against the oil company to recover penalties and forfeit its permit to do business in the State of Texas, were given a retroactive effect in violation of article 1, section 10, of the Federal Constitution. Mr. Justice Day said:

> This argument is predicated largely upon the contention that the conviction in this case was because of the old agreement * * * made long before the passage of the present statute, at a time when it was legal, and before the creation of the defendant company. But in view of the facts found in the state court, * * * there was ground for conviction, not because of the making of the old agreement for the division of the territory and the suppression of competition while the old company was in existence, but because the new company was found to have carried out the old agreement and made itself a party thereto, and by continuing the old arrangement after the passage of the law had brought itself within its terms. Of a similar contention this court said in *Trans-Missouri Traffic Association* case (166 U. S., 290):

> "It is said that to grant the injunction prayed for in this case is to give the statute a retroactive effect. That the contract at the time it was entered into was not prohibited or declared illegal by the statute, as it had not then been passed; and to now enjoin the doing of an act which was legal at the time it was done would be improper. We give to the law no retroactive effect. *The agreement in question is a continuing one.* The parties to it adopt certain machinery and agree to certain methods for the purpose of establishing and maintaining in the future reasonable rates for transportation. Assuming such action to have been legal at the time the agreement was first entered into, the continuation of the agreement, after it had been declared to be illegal, becomes a violation of the act. The statute prohibits the continuing or entering into such an agreement for the future, and if the agreement be continued it then becomes a violation of the act."

The authorities we have cited to show that the conspiracy is a continuing offense and that the statute of limitations only runs from the last overt act are not cited because the question of the statute of limitations is important in this case, for we are not at this time seeking a conviction under the criminal statute; we are seeking, rather, to prevent the continuance of the conspiracy in restraint of trade and in monopolization thereof. The effect of the prior stages in assisting the court to draw its conclusions as to the legality of the present acts is equally great, whether or not in a

criminal prosecution the statute of limitations has interposed a bar. The conclusion to be drawn from the history is as effectual in the one case as in the other. Any other construction would work absurdities. The result would be that a criminal conspiracy to restrain commerce, continued for more than three years, enlarged, made more effective, and extended over the country from time to time, would, by the very lapse of time, become legal, although giving the history of the conspiracy would tend to show more than anything else its present illegality.

This is simply another way of arguing that we have a right to state the whole conspiracy, although what we are seeking to enjoin is its present stage. There never has been a time when the conspiracy was at an end or completed. There never was a time when the conspiracy was so far completed that the statute of limitations could be said to have commenced to run, or that the conspiracy could be alleged without stating the antecedent steps; and the reason is that it is a continuing conspiracy, constantly operating upon the commerce of the country and constantly changing and shifting to suit the conditions as they present themselves.

VIII.

IT IS AN ELEMENTARY PRINCIPLE OF EVIDENCE THAT WHERE TWO OR MORE PERSONS ARE ASSOCIATED TOGETHER FOR SOME ILLEGAL PURPOSE THE ACTS OR DECLARATIONS OF ONE OF THEM IN REFERENCE TO THE COMMON OBJECT ARE ADMISSIBLE AGAINST ALL.

1 Greenleaf on Evidence, sec. 111.

2 Wigmore on Evidence, sec. 1079.

American Fur Co. v. *United States*, 2 Peters, 358; 8 Curtis, 138.

Clune v. *United States*, 159 U. S., 593.

Wiborg v. *United States*, 163 U. S., 656.

Lincoln v. *Claflin*, 7 Wall., 138.

Conn. Mutual Life Ins. Co. v. *Hillmon*, 188 U. S., 219.

United States v. *Newton*, 48 Fed., 218.

United States v. *Gooding*, 7 Curtis, 286; 12 Wheaton, 460.

Nudd v. *Burrows*, 91 U. S., 427.

United States v. *McKee*, 26 Fed. Cases, No. 15685.

State v. *Winner*, 17 Kans., 305.

State v. *Thompson*, 69 Conn., 720.

Hunter v. *State*, 112 Ala., 77.

Lee v. *Lamprey*, 43 N. H., 1.

Apthorp v. *Comstock*, 2 Paige's Ch. 482.

Jackson v. *Summerville*, 13 Pa. St., 359.

Burns & Stevens v. *McCabe*, 72 Pa. St., 309.

Confer et al. v. *McNeal*, 74 Pa. St., 112.

All of the acts therefore done by the agents and administrative officers of these companies during all

these years, and all the declarations not only of the defendants but of all parties who from time to time were parties to the conspiracy, are evidence in this case against the defendants.

We are aware of the general rule that ordinarily some prima facie evidence of the conspiracy must be offered before the declarations of the coconspirators can be received in evidence. The facts in this case, in our opinion, clearly show that the conspiracy had been proved long before the questions concerning the declarations of witnesses were offered in evidence. Even if this were not so, the general rule is always relaxed where proof of the conspiracy depends upon a vast amount of circumstantial evidence or a number of isolated and independent facts.

1 Greenleaf on Evidence, 111.
State v. *Thompson*, 69 Conn., 720.
State v. *Winner*, 17 Kans., 305.

In cases of conspiracy the admissions of the accused conspirators are always a fruitful source of evidence. Only in exceptional cases is the conspiracy shown by direct and positive evidence. The proof is usually indirect and circumstantial, and courts are bound to rely in large measure upon the declarations made by the conspirators either during or after the accomplishment of the common purpose.

State v. *Thompson*, 69 Conn., 720.
Clune v. *United States*, 159 U. S., 592.
United States v. *Hutchins*, 26 Fed. Cases, No. 15430.

United States v. *Hamilton*, 26 Fed. Cases, No. 15288.

The Mussel Slough case, 5 Fed., 680.

United States v. *Babcock*, 3 Dillon, 581.

United States v. *Lancaster*, 26 Fed. Cases, No. 15557.

Davis v. *United States*, 107 Fed., 753.

In *State* v. *Grant* (53 N. W., 120, Iowa) it is held that evidence of the acts or declarations of the employees of conspirators is admissible against such conspirators when it proves that the acts were done and the declarations made during the progress of the conspiracy and in furtherance of its objects.

> It was not necessary that the defendants should in person have made the alleged false pretenses, or obtained the notes. They might employ others to act for them in that respect, and, if their acts and representations were authorized by defendants, they would be admissible in evidence against them in case they were made during the progress of the conspiracy. (Cit. *Con* v. *Harley*, 3 Metcalf, Mass., 462; 2d Wharton Criminal Law, 8th ed., 1171–1202.)

In *State* v. *Stockover* (58 Alt., 769, Conn.) it has been held that on a trial for a criminal conspiracy "evidence of acts of defendants and of their agents in endeavoring to accomplish the purpose of the conspiracy is admissible as evidence of the manner in which it was designed to be accomplished."

In *Commonwealth* v. *Rogers* (63 N. E., 421, Mass.) it was held that on a joint trial of several defendants

for a conspiracy evidence of declarations by the several defendants is admissible as against each individually so testifying, though not admissible against the other defendants, but evidence afterwards introduced of the conspiracy authorizes the consideration of these declarations against all persons shown to have been parties to the conspiracy.

In the case at bar the Government introduced testimony of various of the defendants and others connected with them, given before committees of legislatures and of Congress, and in various cases pending in the courts of Pennsylvania. The defendants stipulated waiving proof that the witnesses had so testified (vol. 6, p. 3235 et seq.), and under this stipulation certain testimony was introduced of such witnesses as John D. Archbold (vol. 6, pp. 3236–3286), Daniel O'Day (vol. 6, pp. 3286–3293), Henry H. Rogers (vol. 6, pp. 3293–3305), Benjamin Brewster (vol. 6, pp. 3306–3308), J. A. Bostwick (vol. 6, pp. 3308–3319), John R. Campbell (vol. 6, pp. 3319–3325), Edward Hopkins (vol. 6, pp. 3325–3328), A. J. Cassatt (vol. 20, p. 2 et seq.), Oliver H. Payne (vol. 20, p. 341, Petitioner's Exhibit 1004), Henry M. Flagler (vol. 20, p. 341, Petitioner's Exhibit 1005), and John D. Rockefeller (vol. 20, p. 342, Petitioner's Exbibit 1006).

It is unnecessary here to review the testimony to show the conspiracy or the connection of these individuals therewith. It may be proper, however, to refer to the fact that Archbold, Rogers, Brewster, Bostwick, Payne, and Flagler were parties to the

first trust agreement of 1879 and the second trust agreement of 1882. Daniel O'Day was general manager of the pipe lines, first of the American Transfer Company, then of the United Pipe Lines, then of the National Transit Company, and closely connected with the Standard institutions down to the time of his death in 1906.

When A. J. Cassatt was vice-president in charge of traffic on the Pennsylvania Railroad he signed the agreement for the payment of rebates with Daniel O'Day (Exhibit 8 to the petition); and the testimony is clear that the Pennsylvania Railroad Company was for years—in fact down to 1905—a party to the conspiracy with various of the Standard Oil companies. Mr. Cassatt was present and took part in the negotiations for the sale of the Empire Transportation Company, pipe lines and refineries, to the Standard Oil Company, in 1878, and had a hand in making the agreement at the same time whereby it was agreed to refund the Standard Oil Company 10 per cent of all the freight charges paid by it and providing that no other shipper should pay less than the full rate (Exhibit 7 to the petition). Furthermore, a pool agreement between the Pennsylvania Railroad Company and the National Transit Company was made August 22, 1884, dividing the traffic in oil and guaranteeing the Pennsylvania 26 per cent of the oil shipments from western Pennsylvania and Ohio to the seacoast, another agreement being made on the same date whereby the Standard Oil Company agreed to pipe

the Pennsylvania Railroad's share of the oil through its own pipes and pay the Pennsylvania Railroad three-quarters of the rate, without the Pennsylvania Company performing any service whatever. The execution of this contract is admitted in the answer (vol. A, p. 486), and it appears by the testimony of Jefferson Justice, of the Pennsylvania Railroad Company, that it was not actually canceled until 1905, although he claims that it was not acted under for several years prior thereto.

John R. Campbell was treasurer of the United Pipe Lines and Hopkins was superintendent and general manager thereof.

The foregoing rules also apply to a large amount of other testimony and declarations of various railway officials and parties in the employ of the Standard Oil companies, whose testimony appears from time to time in this case.

IX.

THE CIRCUIT COURT OF THE UNITED STATES HAD JURISDICTION IN THIS CASE.

After the service of the equity subpœna in the court below, the defendants moved to set aside the service and dismiss the bill on the ground that the court had no jurisdiction. One of the defendants, the Waters-Pierce Oil Company, was organized under the laws of Missouri and had its principal office in the Eastern Division of the Eastern District of Missouri, where the suit was brought. Several other of the defendant corporations were duly admitted into the State of Missouri and had offices in and were doing business in the Eastern Division of the Eastern District of Missouri, to wit, the Standard Oil Company of Indiana, the Republic Oil Company, and the Prairie Oil and Gas Company.

At the time the bill was filed a petition was also filed stating the place of residence of the various defendants. Upon said petition the court, under section 5 of the act, ordered the nonresident parties to be brought in by the service of a subpœna upon each in the district of his or its residence by the marshal thereof. (Petition and order, vol. A, pp. 173–180; motions, vol. A, pp. 227–235.)

The motion was heard before the four circuit judges under the act expediting cases. The opinion by Judge Sanborn, concurred in by Judges Van Devanter, Hook, and Adams, is such a complete answer to every proposition made that it is unnecessary to

elaborate upon the decision of the court. (See vol. A, p. 563; s. c. 152 Fed., 290.) We shall here suggest only certain arguments which were not made by the court in this opinion and which we believe throw some light upon the proposition.

It appears by the congressional debates that the original bill did not contain sections 4 and 5, conferring jurisdiction on the circuit courts and providing that process should run into any district, and that Senator Spooner's amendment adding those sections was made for the very purpose of taking this class of cases out of the general rule provided by the judiciary act. This is clearly shown by the arguments of Senators Spooner, Sherman, Hoar, Edmunds, and others. They show that Congress was impressed by the necessity of authorizing a suit in a tribunal which could in one action reach defendants in all parts of the United States.

While it is true that mere expressions of opinion by Senators and Representatives in discussing a bill can not be resorted to for the purpose of construing the language of the law finally enacted, yet such debates may be resorted to for the purpose of showing the condition of the times and the history of the measure, to enable the court to determine the precise conditions which its provisions were designed to remedy. (*Blake* v. *National Banks*, 23 Wall., 317; *Chesapeake and Potomac Tel. Co.* v. *Manning*, 186 U. S., 245; *American Net and Twine Co.* v. *Worthington*, 141 U. S., 473; *Jemison* v. *Kirk*, 98 U. S., 460; *United States* v. *Freight Association*, 166 U. S., 291.)

It appears that this bill was amended and committed to the Judiciary Committee principally for the purpose of adding to it the sections in question. (Cong. Rec., vol. 21, pt. 3, pp. 2568, 2569, 2571, 2604, 2605, 2639, 2644, 2652, 2725, 2726, 2731, 2901, 4086, and 4104.)

It further appears that the practice followed in this case was the same as that followed in other cases. In the Northern Securities case the only corporation organized under the laws of Minnesota was the Northern Pacific Railroad; the principal defendants resided in New York. The suit against the Paper Trust was brought in Minnesota against 24 corporations, 3 of which were residents of Minnesota and the other 21 residents of Michigan and Wisconsin. The Addison Pipe case was brought in the district of Tennessee, against 6 corporations organized and having their principal places of business in States as follows: One in Ohio, 1 in Kentucky, 2 in Alabama, and 2 in Tennessee.

The very object of the section was to give the court power to reach combinations of corporations organized under the laws of various States and individuals, wherever they might reside. This was necessary in order that the statute might be effectively enforced.

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APPENDIX A.

TRUST AGREEMENT OF 1879.

(Defendants' Exhibit 257; vol. 19, p. 618.)

Whereas the Standard Oil Company, of Cleveland, Ohio, holds the possession of certificates for certain stocks and interests which it is desirable to distribute among the parties entitled thereto; and whereas such stocks and interests now stand in the names of several persons, and it is desirable for convenience in dividing them that all be transferred to trustees, and that the same be so transferred by the Standard Oil Company, by each party holding the same, and by every person holding or claiming an interest therein.

Now, in consideration of the foregoing, and of the sum of one dollar to us paid, and other considerations satisfactory to us, we, the undersigned, hereby grant, assign, transfer, and convey all our right, title, and interests and all the right, title, and interest of each and every one of us of whatever name and nature in and to all and singular the following-described stocks and interests, to wit:

Entire capital stock of Long Island Oil Company.
2,700 shares capital stock of Devoe Manufacturing Co.
Entire capital stock of Charles Pratt & Co.
5,059 shares capital stock of Baltimore United Oil Co.
525 shares capital stock of Keystone Refining Co.
Entire capital stock of Sone & Fleming Manufacturing Co., Limited.
Entire capital stock of Atlantic Refining Co.
Entire capital stock of Standard Oil Co. (of Pennsylvania).
Entire capital stock of Model Oil Co.
1,775 shares capital stock of American Lubricating Oil Co.
Entire capital stock of Camden Consolidated Oil Co.
2,268 shares capital stock of Central Refining Co.
700 shares capital stock of Maverick Oil Co.
Entire capital stock of Republic Refining Co.

400 shares capital stock of Waters-Pierce Oil Co.
300 shares capital stock of Consolidated Tank Line Co.
Entire capital stock of American Transfer Co.
41,590 shares capital stock of United Pipe Lines.
Entire interest in and capital stock of Paine, Ablett & Co., Limited.
145/175ths of entire interest in and capital stock of Eclipse Lubricating Oil Co., Limited.
3/4ths of entire interest in and capital stock of H. C. Van Tine & Co. (Limited).
7/8ths of entire interest in and capital stock of Galena Oil Works (Limited).
Entire capital stock of Smith's Ferry Oil Transpn. Co.
14,713 (old) shares stock and interest in Producers' Consolidated Land & Petroleum Co.
Special investment at Oil City, Pa.
Business and property of Star Oil Co., Erie, Pa.
Business and property of Warden, Frew & Co., Philadelphia, Pa.
Entire capital stock of Philadelphia Refining Co.
Entire capital stock of Olean Petroleum Co. (Limited).
Entire capital stock of Columbia Conduit Co.

and also all other interests of every kind and description held by the Standard Oil Company or in which it has any interest which can be or by right ought to be divided and distributed among the parties entitled thereto, without affecting its proper, legitimate, and efficient operations as a corporation, to Myron R. Keith, George F. Chester, and George H. Vilas, as trustees, to have and to hold said stocks and interests to them and their survivors and successors, in trust nevertheless for the following purposes, to wit: To hold, control, and manage the said stocks and interests for the exclusive use and benefit of the following-named persons and in the following proportions named:

Charles Pratt	2700/35000	thereof.
Horace A. Pratt	15/35000	"
Henry H. Rogers	910/35000	"
C. M. Pratt	200/35000	"
Wm. Rockefeller	1600/35000	"
O. B. Jennings	818/35000	"
W. H. Macy	59/35000	"
W. H. Macy, jr	28/35000	"
Estate of Josiah Macy	892/35000	"

A. J. Pouch	178/35000	thereof.
J. A. Bostwick	1872/35000	"
Warden, Frew & Co	485/35000	"
Chas. Lockhart	1408/35000	"
Wm. C. Warden	1292/35000	"
O. H. Payne, trustee	61/35000	"
S. V. Harkness	2925/35000	"
H. M. Flagler	3000/35000	"
Daniel Bushnell	97/35000	"
Jos. L. Warden	98/35000	"
J. J. Vandergrift	500/35000	"
F. A. Arter	35/35000	"
Gustave Heye	178/35000	"
L. G. Harkness	178/35000	"
Hanna & Chapin	263/35000	"
A. M. McGregor	118/35000	"
D. Brewster	409/35000	"
W. C. Andrews	990/35000	"
Horace A. Hutchins	111/35000	"
John D. Archbold	350/35000	"
John D. Rockefeller	8984/35000	"
J. N. Camden	200/35000	"
W. P. Thompson	132/35000	"
D. M. Harkness	323/35000	"
O. H. Payne	2637/35000	"
John Huntington	584/35000	"
W. T. Wardell	78/35000	"
H. W. Payne	292/35000	"

and to divide and distribute the same as soon as they can conveniently do so between the said persons for whose benefit they hold the same as aforesaid, and in the respective proportions aforesaid; with full power and authority to the survivors of the said trustees in case of the death of either of them to nominate and appoint a successor to such deceased trustee if they shall think it expedient so to do or else to continue the said trust without filling such vacancy.

In witness whereof the Standard Oil Co. has, by its president and secretary, duly authorized thereto, set its name and affixed its corporate seal, and the others of the undersigned have hereto set their hands and seals this eighth day of April, A. D. 1879.

STANDARD OIL COMPANY,
By JOHN D. ROCKEFELLER,
Prest.

Attest:
H. M. FLAGLER, *Secy.*

Chas. Pratt.
Horace A. Pratt, by Chas. Pratt, attorney.
C. M. Pratt, by Chas. Pratt, attorney.
Henry H. Rogers.
Wm. Rockefeller.
J. A. Bostwick, by Wm. Rockefeller, attorney.
W. T. Wardwell, by Wm. Rockefeller, attorney.
O. B. Jennings.
A. J. Pouch, by J. D. Rockefeller, attorney.
W. H. Macy, by H. M. Flagler, attorney.
Estate of Josiah Macy, by H. M. Flagler, attorney.
W. G. Warden, by H. M. Flagler, attorney.
C. F. G. Heye, by H. M. Flagler, attorney.
L. G. Harkness, by H. M. Flagler, attorney.
Benj. Brewster, by H. M. Flagler, attorney.
D. M. Harkness, by H. M. Flagler, attorney.
W. H. Macy, jr., by H. M. Flagler, attorney.
Warden, Frew & Co.
Chas. Lockhart.
Daniel Bushnell, by C. Lockhart, attorney.
Jos. L. Warden, by C. Lockhart, attorney.
Chas. Lockhart, trustee.
O. H. Payne.
O. H. Payne, trustee.
H. W. Payne, by O. H. Payne, executor.
F. A. Arter, by O. H. Payne, attorney.
H. M. Hanna and Geo. W. Chapin, by O. H. Payne, attorney.
A. M. McGregor, by O. H. Payne, attorney.
H. A. Hutchins, by O. H. Payne, attorney.
J. N. Camden, by O. H. Payne, attorney.
W. P. Thompson, by O. H. Payne, attorney.
John Huntington, by O. H. Payne, attorney.
S. V. Harkness.
H. M. Flagler.
John D. Archbold.
J. J. Vandergrift.
W. C. Andrews.
John D. Rockefeller.
H. M. Flagler, treasurer in trust.
H. M. Flagler, secretary, trustee.
H. M. Flagler, trustee.
H. M. Flagler, in trust.
Geo. H. Vilas.
Geo. F. Chester.
J. F. Freeman.
Geo. W. Girty.
H. B. Spelman.
F. Q. Barstow.
D. McIntosh.
Daniel O'Day.
Wm. Brough.
W. G. Warden, trustee.
L. H. Severance.
H. A. Hutchins.
Jos. Bushnell.
Jas. McGee.
Philip Ruprecht.
J. Crowell.
J. N. Camden, trustee.
Geo. I. Vail.

APPENDIX B.

TRUST AGREEMENT AND SUPPLEMENTAL TRUST AGREEMENT OF 1882.

(Petition, vol. A, p. 21.)

This agreement, made and entered upon this second day of January, A. D. 1882, by and between all the persons who shall now or may hereafter execute the same as parties thereto.

Witnesseth: I. It is intended that the parties to this agreement shall embrace three classes, to wit:

1st. All the stockholders and members of the following corporations and limited partnerships, to wit:

Acme Oil Company, New York.
Acme Oil Company, Pennsylvania.
Atlantic Refining Company of Philadelphia.
Bush & Co. (Limited).
Camden Consolidated Oil Company.
Elizabethport Acid Works.
Imperial Refining Company (Limited).
Charles Pratt & Co.
Paine, Ablett & Co.
Standard Oil Company, Ohio.
Standard Oil Company, Pittsburg.
Smith's Ferry Oil Transportation Company.
Solar Oil Company (Limited).
Sone & Fleming Manufacturing Company (Limited).

Also, all the stockholders and members of such other corporations and limited partnerships as may hereafter join in this agreement, at the request of the trustees herein provided for.

2d. The following individuals, to wit:

W. C. Andrews, John D. Archbold, Lide K. Arter, J. A. Bostwick, Benjamin Brewster, D. Bushnell, Thomas C. Bushnell, J. N. Camden, Henry L. Davis, H. M. Flagler, Mrs. H. M. Flagler, John Huntington, H. A. Hutchins, Charles F. G. Heye, A. B. Jennings, Charles Lockhart, A. M. McGregor, William H. Macy, William H. Macy, jr., estate of

Josiah Macy, William H. Macy, jr., executor; O. H. Payne, A. J. Pouch, John D. Rockefeller, William Rockefeller, Henry H. Rogers, W. P. Thompson, J. J. Vandergrift, William T. Wardwell, W. G. Warden, Joseph L. Warden, Warden, Frew & Co., Louise C. Wheaton, H. M. Hanna, and George W. Chapin, D. M. Harkness, D. M. Harkness, trustee; S. V. Harkness, O. H. Payne, trustee; Charles Pratt, Horace A. Pratt, C. M. Pratt, Julia H. York, George H. Vilas, M. R. Keith, trustees; George F. Chester.

Also all such individuals as may hereafter join in the agreement at the request of the trustees herein provided for.

3d. A portion of the stockholders and members of the following corporations and limited partnerships, to wit:

American Lubricating Oil Company.
Baltimore United Oil Company.
Beacon Oil Company.
Bush & Denslow Manufacturing Company.
Central Refining Company of Pittsburg.
Cheesebrough Manufacturing Company.
Chess Carley Company.
Consolidated Tank Line Company.
Inland Oil Company.
Keystone Refining Company.
Maverick Oil Company.
National Transit Company.
Portland Kerosene Oil Company.
Producers' Consolidated Land and Petroleum Company.
Signal Oil Works (Limited).
Thompson & Bedford Company (Limited).
Devoe Manufacturing Company.
Eclipse Lubricating Oil Company (Limited).
Empire Refining Company (Limited).
Franklin Pipe Company (Limited).
Galena Oil Works (Limited).
Galena Farm Oil Company (Limited).
Germania Mining Company.
Vacuum Oil Company.
H. C. Van Tine & Company (Limited).
Waters-Pierce Oil Company.

Also, stockholders and members (not being all thereof) of other corporations and limited partnerships who may hereafter join in this agreement at the request of the trustees herein provided for.

II. The parties hereto do covenant and agree to and with each other, each in consideration of the mutual covenants and agreements of the others, as follows:

1st. As soon as practicable a corporation shall be formed in each of the following States, under the laws thereof, to wit: Ohio, New York, Pennsylvania, New Jersey; provided, however, that instead of organizing a new corporation, any existing charter and organization may be used for the purpose when it can advantageously be done.

2d. The purposes and powers of said corporation shall be to mine for, produce, manufacture, refine, and deal in petroleum and all its products, and all the materials used in such businesses, and transact other business collateral thereto. But other purposes and powers shall be embraced in the several charters such as shall seem expedient to the parties procuring the charter, or, if necessary to comply with the law, the powers aforesaid may be restricted and reduced.

3d. At any time hereafter, when it may seem advisable to the trustees herein provided for, similar corporations may be formed in other States and Territories.

4th. Each of said corporations shall be known as the Standard Oil Company of (and here shall follow the name of the State or Territory by virtue of the laws of which said corporation is organized).

5th. The capital stock of each of said corporations shall be fixed at such an amount as may seem necessary and advisable to the parties organizing the same, in view of the purpose to be accomplished.

6th. The shares of stock of each of said corporations shall be issued only for money, property, or assets equal at a fair valuation to the par value of the stock delivered therefor.

7th. All of the property, real and personal, assets, and business of each and all of the corporations and limited partnerships mentioned or embraced in class first, shall be transferred to and vested in the said several Standard Oil Companies. All of the property, assets, and business in or

of each particular State shall be transferred to and vested in the Standard Oil Company of that particular State, and in order to accomplish such purpose the directors and managers of each and all of the several corporations and limited partnerships mentioned in class first are hereby authorized and directed by the stockholders and members thereof (all of them being parties to this agreement) to sell, assign, transfer, convey, and make over, for the consideration hereinafter mentioned, to the Standard Oil Company or companies of the proper State or States, as soon as said corporations are organized and ready to receive the same, all the properties, real and personal, assets, and business of said corporations and limited partnerships. Correct schedules of such property, assets, and business shall accompany each transfer.

8th. The individuals embraced in class second of this agreement do, each for himself, agree for the consideration hereinafter mentioned to sell, assign, transfer, convey, and set over all the property, real and personal, assets and business mentioned and embraced in schedule accompanying such sale and transfer to the Standard Oil Company or companies of the proper State or States, as soon as the said corporations are organized and ready to receive the same.

9th. The parties embraced in class third of this agreement do covenant and agree to assign and transfer all of the stock held by them in the corporations or limited partnerships herein named, to the trustees herein provided for, for the consideration and upon the terms hereinafter set forth. It is understood and agreed that the said trustees and their successors may hereafter take the assignment of stock in the same or similar companies upon the terms herein provided, and that whenever and as often as all of the stocks of any corporation or limited partnerships are vested in said trustee, the proper steps may then be taken to have all the moneys, property, real and personal, of such corporation or partnership assigned and conveyed to the Standard Oil Company, of the proper State, on the terms and in the mode herein set forth, in which event the trustees shall receive stocks of the Standard Oil Companies, equal to the value of the money, property, and business assigned, to be held in place of the stocks of the company or companies assigning such property.

10th. The consideration for the transfer and conveyance of the money, property, and business aforesaid to each or any of the Standard Oil companies shall be stock of the respective Standard Oil company to which said transfer or conveyance is made, equal at par value to the appraised value of the money, property, and business so transferred. Said stock shall be delivered to the trustees hereinafter provided for, and their successors, and no stock of any of said companies shall ever be issued except for money, property, or business equal, at least, to the par value of the stock so issued, nor shall any stock be issued by any of said companies for any purpose except to the trustees herein provided for, to be held subject to the trusts hereinafter specified. It is understood, however, that this provision is not intended to restrict the purchase, sale, or exchange of property by said Standard Oil companies as fully as they may be authorized to do by their respective charters; provided only that no stock be issued therefor except to said trustees.

11th. The consideration for any stocks delivered to said trustees, as above provided for, as well as for stocks delivered to said trustees by persons mentioned or included in class third of this agreement, shall be the delivery by said trustees to the persons entitled thereto of trust certificates hereinafter provided for, equal at par value to the par value of the stocks of the said several Standard Oil companies so received by said trustees, and equal to the appraised value of the stocks of other companies or partnerships delivered to said trustees.

The said appraised value shall be determined in a manner agreed upon by the parties in interest and said trustees.

It is understood and agreed, however, that the said trustees may, with any trust funds in their hands, in addition to the mode above provided, purchase the bonds and stocks of other companies engaged in business similar or collateral to the business of said Standard Oil Companies on such terms and in such mode as they may deem advisable, and shall hold the same for the benefit of the owners of said trust certificates, and may sell, assign, transfer, and pledge such bonds and stocks whenever they may deem it advantageous to said trust so to do.

III. The trusts upon which said stocks shall be held, and the number, powers, and duties of said trustees shall be as follows:

1st. The number of trustees shall be nine.

2d. J. D. Rockefeller, O. H. Payne, and William Rockefeller are hereby appointed trustees, to hold their office until the first Wednesday of April, A. D. 1885.

3d. J. A. Bostwick, H. M. Flagler, and W. G. Warden are hereby appointed trustees, to hold their office until the first Wednesday of April, A. D. 1884.

4th. Charles Pratt, Benjamin Brewster, and John Archbold are hereby appointed trustees, to hold their office until the first Wednesday of April, A D. 1883.

5th. Elections for trustees to succeed those herein appointed shall be held annually, at which election a sufficient number of trustees shall be elected to fill all vacancies occurring, either from expiration of the term of the office of trustee or from any other cause. All trustees shall be elected to hold their office for three years, except those elected to fill a vacancy arising from any cause except expiration of term, who shall be elected for the balance of the term of the trustee whose place they are elected to fill. Every trustee shall hold his office until his successor is elected.

6th. Trustees shall be elected by ballot by the owners of trust certificates or their proxies. At all meetings the owners of trust certificates, who may be registered as such on the books of the trustees, may vote in person or by proxy, and shall have one vote for each and every share of trust certificates standing in their names, but no such owner shall be entitled to vote upon any share which has not stood in his name thirty days prior to the day appointed for the election. The transfer books may be closed for thirty days immediately preceding the annual election. A majority of the shares represented at such election shall elect.

7th. The annual meeting of the owners of said trust certificates for the election of trustees and for other business shall be held at the office of the trustees, in the city of New York, on the first Wednesday of April of each year, unless the place of meeting be changed by the trustees; and said meeting may be adjourned from day to day until its business is completed. Special meetings of the owners of said trust certificates may

be called by a majority of the trustees at such times and places as they may appoint. It shall also be the duty of the trustees to call a special meeting of holders of trust certificates, whenever requested to do so, by a petition signed by the holders of ten per cent in value of such certificates. The business of such special meetings shall be confined to the object specified in the notice given therefor. Notice of the time and place of all meetings of the owners of trust certificates shall be given by personal notice as far as possible, and by public notice in one of the principal newspapers of each State in which a Standard Oil Company exists, at least ten days before such meeting. At any meeting, a majority in value of the holders of trust certificates represented consenting thereto, by-laws may be made, amended, and repealed relative to the mode of the election of trustees, and other business of the holders of trust certificates; provided, however, that said by-laws shall be in conformity with this agreement. By-laws may also be made, amended, and repealed at any meeting, by and with the consent of a majority in value of the holders of trust certificates, which alter this agreement relative to the number, powers, and duties of the trustees, and to other matters tending to the more efficient accomplishment of the objects for which the trust is created; provided only, that the essential intents and purposes of this agreement be not thereby changed.

8th. Whenever a vacancy occurs in the board of trustees more than sixty days prior to the annual meeting for the election of trustees, it shall be the duty of the remaining trustees to call a meeting of the owners of Standard Oil Trust certificates for the purpose of electing a trustee or trustees to fill the vacancy or vacancies. If any vacancy occurs in the board of trustees from any cause within sixty days of the date of the annual meeting for the election of trustees, the vacancy may be filled by a majority of the remaining trustees, or, at their option, may remain vacant until the annual election.

9th. If for any reason at any time a trustee or trustees shall be appointed by any court to fill any vacancy or vacancies in said board of trustees, the trustee or trustees so appointed shall hold his or their respective office or offices only until a successor or successors shall be elected in the manner above provided for.

10th. Whenever any change shall occur in the board of trustees, the legal title to the stock and other property held in trust shall pass to and vest in the successors of said trustees without any formal transfer thereof. But if at any such time formal transfer shall be deemed necessary or advisable, it shall be the duty of the board of trustees to obtain the same, and it shall be the duty of any retiring trustee, or the administrator or executor of any deceased trustee, to make said transfer.

11th. The trustees shall prepare certificates which shall show the interest of each beneficiary in said trust and deliver them to the persons properly entitled thereto. They shall be divided into shares of the par value of $100 each, and shall be known as the Standard Oil Trust certificates, and shall be issued subject to all the terms and conditions of this agreement. The trustees shall have power to agree upon and direct the form and contents of said certificates and the mode in which they shall be signed, attested, and transferred. The certificates shall contain an express stipulation that the holders thereof shall be bound by the terms of this agreement and by the by-laws herein provided for.

12th. No certificates shall be issued except for stocks and bonds held in trust as herein provided for, and the par value of certificates issued by said trustees shall be equal to the par value of the stocks of said Standard Oil Company and the appraised value of other bonds and stocks held in trust. The various bonds, stocks, and moneys held under said trust shall be held for all parties in interest jointly, and the trust certificates so issued shall be the evidence of the interest held by the several parties in this trust. No duplicate certificates shall be issued by the trustees except upon surrender of the original certificate or certificates for cancellation, or upon satisfactory proof of the loss thereof, and in the latter case they shall require a sufficient bond of indemnity.

13th. The stocks of the various Standard Oil companies, held in trust by said trustee, shall not be sold, assigned, or transferred by said trustees, or by the beneficiaries, or by both combined, so long as this trust endures. The stocks and bonds of other corporations held by said trustees may be by them exchanged or sold and the proceeds thereof distributed pro rata to the holders of trust certificates, or said proceeds may be held and reinvested by said trustees for the purposes

and uses of the trust; provided, however, that said trustees may from time to time assign such shares of stock of said Standard Oil Company as may be necessary to qualify any person or persons chosen or to be chosen as directors and officers of any of said Standard Oil companies.

14th. It shall be the duty of said trustees to receive and safely to keep all interest and dividends declared and paid upon any of the said bonds, stocks, and moneys held by them in trust, and to distribute all moneys received from such sources or from sales of trust property or otherwise by declaring and paying dividends upon the Standard Trust certificates as funds accumulate, which in their judgment are not needed for the use and expenses of said trust. The trustees shall, however, keep separate account of receipts from interests and dividends, and of receipts from sales or transfers of trust property, and in making any distribution of trust funds, in which moneys derived from sales or transfers shall be included, shall render the holders of trust certificates a statement showing what amount of the fund distributed has been derived from such sales or transfers. The said trustees may be also authorized and empowered by a vote of a majority in value of holders of trust certificates, whenever stocks or bonds have accumulated in their hands from money purchases thereof, or the stocks or bonds held by them have increased in value, or stock dividends shall have been declared by any of the companies whose stocks are held by said trustees, or whenever, from any such cause, it is deemed advisable so to do, to increase the amount of trust certificates to the extent of such increase or accumulation of values, and to divide the same among the persons then owning trust certificates pro rata.

15th. It shall be the duty of said trustees to exercise general supervision over the affairs of said several Standard Oil companies, and, as far as practicable, over the other companies or partnerships, any portion of whose stock is held in said trust. It shall be their duty, as stockholders of said companies, to elect as directors and officers thereof faithful and competent men. They may elect themselves to such positions when they see fit so to do, and shall endeavor to have the affairs of all of said companies managed and directed in the manner they may deem most conducive to the best interests of the holders of said trust certificates.

16th. All the powers of the trustees may be exercised by a majority of their number. They may appoint from their own number an executive and other committees. A majority of each committee shall exercise all the powers which the trustees may confer upon such committee.

17th. The trustees may employ and pay all such agents and attorneys as they deem necessary in the management of said trust.

18th. Each trustee shall be entitled to a salary for his services not exceeding $25,000 per annum, except the president of the board, who may be voted a salary not exceeding $30,000 per annum, which salaries shall be fixed by said board of trustees. All salaries and expenses connected with or growing out of the trust shall be paid by the trustees from the trust fund.

19th. The board of trustees shall have its principal office in the city of New York, unless changed by a vote of the trustees, at which office or in some place of safe deposit in said city, the bonds and stocks shall be kept. The trustees shall have power to adopt rules and regulations pertaining to the meetings of the board, the election of officers, and the management of the trust.

20th. The trustees shall render at each annual meeting a statement of the affairs of the trust. If a termination of the trust be agreed upon, as hereinafter provided, or within a reasonable time prior to its termination by lapse of time, the trustees shall furnish to the holders of trust certificates a true and perfect inventory and appraisement of all stocks and other property held in trust and a statement of the financial affairs of the various companies whose stocks are held in trust.

21st. This trust shall continue during the lives of the survivors and survivor of the trustees in this agreement named, and for twenty-one years thereafter: Provided, however, that if at any time after the expiration of ten years, two-thirds of all the holders in value, or if, after the expiration of one year, ninety per cent of all the holders in value of trust certificates, shall, at a meeting of holders of trust certificates called for that purpose, vote to terminate this trust at some time to be by them then and there fixed the said trust shall terminate at the date so fixed. If the holders of trust certificates shall vote to terminate the trust as aforesaid, they may, at the same meeting or at a subsequent meeting called for that

purpose, decide by a vote of two-thirds in value of their number, the mode in which the affairs of the trust shall be wound up, and whether the trust property shall be distributed or whether it shall be sold, and the values thereof distributed; or whether part, and if so, what part shall be divided and what part shall be sold, and whether such sale shall be public or private.

The trustees, who shall continue to hold their offices for that purpose, shall make the distribution in the mode directed; or, if no mode be agreed upon by two-thirds in value, as aforesaid, the trustees shall make distribution of the trust property according to law. But said distribution, however made, and whether it be of property or values, or of both, shall be just and equitable, and such as to insure to each owner of a trust certificate his due proportion of the trust property, or the value thereof.

22nd. If the trust shall be terminated by expiration of the time for which it is created, the distribution of the trust property shall be directed and made in the mode above provided.

23d. This agreement, together with the registry of certificates, books of accounts, and other books and papers connected with the business of said trust, shall be safely kept at the principal office of said trustees.

Benj. Brewster.
Jno. D. Archbold.
J. A. Botswick.
Chas. Pratt.
Henry H. Rogers.
H. A. Pratt.
C. M. Pratt.
D. M. Harkness, trustee, by H. M. Flagler, attorney.
Thomas C. Bushnell.
W. C. Andrews.
Chas. F. G. Heye.
William T. Wardwell.
Wm. H. Macy.
Estate Josiah Macy, jr.
Wm. H. Macy, jr., ex.
Wm. H. Macy, jr.
A. M. McGregor.
J. N. Camden, per H. M. Flagler, attorney.
John Huntington, by H. M. Flagler, attorney.
Lide K. Arter, by H. M. Flagler, attorney.
H. M. Hanna and Geo. W. Chapin, by H. M. Flagler, attorney.
Louise C. Wheaton, by H. M. Flagler, attorney.
O. H. Payne, trustee, by H. M. Flagler, attorney.
O. H. Payne, by H. M. Flagler, attorney.
Geo. F. Chester, trustee.
Geo. H. Vilas, trustee.
W. G. Warden.
H. M. Flagler.
John D. Rockefeller.
Wm. Rockefeller.
J. J. Vandergrift.

Mrs. H. M. Flagler, per H. M. Flagler.
A. J. Pouch.
O. B. Jennings.
D. M. Harkness, by H. M. Flagler, attorney.
W. P. Thompson, by H. M. Flagler, attorney.
S. V. Harkness, by H. M. Flagler, attorney.
Chas. Lockhart.
Jos. L. Warden, by Henry L. Davis, attorney.
Julia H. York, per H. M. Flagler, attorney.
H. A. Hutchins, by H. M. Flagler, attorney.
M. R. Keith, trustee.
D. Bushnell.
Warden, Frew & Co.
Henry L. Davis.

Whereas in and by an agreement dated January 2, 1882, and known as the Standard Trust agreement, the parties thereto did mutually covenant and agree *inter alia* as follows, to wit: That corporations to be known as Standard Oil companies of various States should be formed, and that all of the property, real and personal, assets, and business of each and all of the corporations and limited partnerships mentioned or embraced in Class I of said agreement should be transferred to and vested in the said several Standard Oil companies; that all of the property, assets, and business in or of each particular State should be transferred to and vested in the Standard Oil Company of that particular State, and the directors and managers of each and all of the several corporations and associations mentioned in Class I were authorized and directed to sell, assign, transfer, and convey, and make over to the Standard Oil Company or companies of the proper State or States, as soon as said corporations were organized and ready to receive the same, all the property, real and personal, assets, and business of said corporations or associations; and

Whereas it is not deemed expedient that all of the companies and associations mentioned should transfer their property to the said Standard Oil companies at the present time, and in case of some companies and associations it may never be deemed expedient that the said transfers should be made and said companies and associations go out of existence: and

Whereas it is deemed advisable that a discretionary power should be vested in the trustees as to when such transfer or transfers should take place, if at all. Now, it is hereby mutu-

ally agreed between the parties to the said trust agreement, and as supplementary thereto, that the trustees named in the said agreement and their successors shall have the power and authority to decide what companies shall convey their said property as in said agreement contemplated, and when the said sales and transfers shall take place, if at all; and until said trustees shall so decide, each of said companies shall remain in existence and retain its property and business, and the trustees shall hold the stocks thereof in trust as in said agreement provided. In the exercise of said discretion the trustees shall act by a majority of their number, as provided in said trust agreement. All portions of said trust agreement relating to this subject shall be considered so changed as to be in harmony with this supplemental agreement.

In witness whereof the said parties have subscribed this agreement, this 4th day of January, 1882.

Benj. Brewster.
John D. Archbold.
J. A. Bostwick.
Charles Pratt.
Henry H. Rogers.
H. A. Pratt.
C. M. Pratt.
D. M. Harkness, trustee.
D. M. Harkness.
T. C. Bushnell.
W. C. Andrews.
Charles F. G. Heye.
William T. Wardwell.
William H. Macy.
Estate Josiah Macy, jr.
William H. Macy, jr., ex'r.
William H. Macy, jr.
A. M. McGregor.
J. N. Camden.
Julia H. York, by B. H. Y.
O. H. Payne.
George F. Chester, trustee.
M. R. Keith, trustee.
H. M. Flagler.
John D. Rockefeller.
William Rockefeller.
J. J. Vandergrift.
Mrs. H. M. Flagler, by H. M. Flagler.
A. J. Pouch.
O. B. Jennings.
W. O. Thompson.
S. V. Harkness.
John Huntington.
Lide K. Arter.
H. M. Hanna.
George W. Chapin, H. M. Hanna, attorney in fact.
Louise C. Wheaton, by H. M. Flagler.
O. H. Payne, trustee.
Charles Lockhart.
Joseph L. Warden.
Henry L. Davis.
W. G. Warden.
Warden, Frew & Co.
D. Bushnell.
H. A. Hutchins.
George H. Vilas, trustee.

APPENDIX C.

APPENDIX C.

Companies now controlled by the Standard Oil Company, companies whose property they have taken over which were previously controlled by Standard interests, a[nd] competitors of the Standard interests.

Domestic refining, marketing, and manufacturing companies.

(1) Name of present company.	(2) Successor to property of following concerns previously controlled by Standard Oil interests.		(3) Date of organization.	(4) Date of acquisition of stock by Standard Oil interests.	(5) Previously competitor of Standard Oil interests.	(6) Organized by Standard Oil interests (yes or no).	(7) Organized to take over the following concerns [Standard Oil interest
	Names.	Date of such succession.					
Atlantic Refining Co			Before 1874	1874	Yes	No	
	Refining concerns.						
	Standard Oil Company of Pittsburg	1892	1868	1874	Yes	No	
	Acme Oil Company of Pennsylvania	1892	1879	1879		Yes	(See Acme of New York below)
	Which was successor to Pennsylvania properties of—						
	Acme Oil Company of New York	1879	1875	1875		Yes	Bennett, Warner & Co., and Porter, Mo
	Acme of Pennsylvania, also acquired property of—						
	Bush & Co. (Limited)	1882	1880	1880	Yes	No	
	Imperial Refining Company (Limited)	1892	1878	1878		Yes	(See Imperial Refinery below)
	Successor to—						
	Imperial Refinery (partnership)	1878	Before 1874	1874	Yes	No	
	Eclipse Lubricating Oil Company	1892	1878	1878		Yes [a]	Eclipse Works
	Paine, Ablett & Co. [b]	1887	1878	1878		Yes	Paine, Ablett & Co. (partnership), and
	Solar Oil Company (Limited)	(c)	Before 1880	1880	Yes	No	
	Central Refining Company of Pittsburg [b]	1889	Before 1873	1876	Yes	No	
	Globe Refining Company of Pittsburg [b]	1890	About 1887	1890	Yes	No	
	Globe Refining Company of Philadelphia	1890	About 1887	1890	Yes	No	
	Philadelphia Refining Company [d]	(c)	Not given	1877	Yes	No	
	Marketing concerns.						
	Capital City Oil Company (Harrisburg)	1901	1888 [e]	1888		Yes [a]	Presumably minority interests were pre business.
	Electric Light Oil Company (Philadelphia)	1892	Before 1890	1890	Yes	No	
	Denlinger Brothers (Pittsburg)	1906	Before 1902	1902	Yes	No	
S. T. Baker Oil Company			1905	1905		Yes	
Borne-Scrymser Co			1893	1893		Yes	Firm of same name
Chesebrough Manufacturing Co			1880	1881	Yes	No	
Continental Oil Co			1885 [e]	1885		Yes [a]	Minority interests previously in indepe
Empire Refining Co. [f]			Before 1880	1880	Yes	No	

[a] With minority stockholders.
[b] Property first transferred to Standard Oil Company of Pittsburg, and later to Atlantic.
[c] Not given.
[d] This company apparently acquired in Empire Tra
[e] Petitioner's Exhibit No. 257.
[f] Plant consolidated with Standard Oil Company of

APPENDIX C.

panies whose property they have taken over which were previously controlled by Standard interests, and origin of such companies, indicating which were previous competitors of the Standard interests.

Domestic refining, marketing, and manufacturing companies.

(2) previously controlled by Standard Oil interests.		(3)	(4)	(5)	(6)	(7)	(8) Concern was party to—			(9)
	Date of such succession.	Date of organization.	Date of acquisition of stock by Standard Oil interests.	Previously competitor of Standard Oil interests.	Organized by Standard Oil interests (yes or no).	Organized to take over the following concerns previously competing with Standard Oil interests.	Trust of 1879.	Trust of January 1, 1882.	Trust at some time in 1882–1892.	Reference to evidence regarding previous competition (columns 5 and 7).
.....	.....	Before 1874.....	1874	Yes.....	No.....	.....	Yes....	Yes....	Yes....	16: 3080, 3166–3167.
cerns.										
g.....	1892	1868.....	1874	Yes.....	No.....	.....	Yes....	Yes....	Yes....	16: 3081, 3168.
nia.....	1892	1879.....	1879	.....	Yes.....	(See Acme of New York below).....	Yes....	Yes....	Yes....	
nsylvania properties of—										
ork.....	1879	1875.....	1875	.....	Yes.....	Bennett, Warner & Co., and Porter, Moreland & Co.....	Yes....	Yes....	Yes....	16: 3083, 3168; 17: 3342.
acquired property of—										
.....	1882	1880.....	1880	Yes.....	No.....	.....	.....	Yes....	Yes....	17: 3352.
ited).....	1892	1878.....	1878	.....	Yes.....	(See Imperial Refinery below).....	Yes....	Yes....	Yes....	
p).....	1878	Before 1874.....	1874	Yes.....	No.....	.....	.....	.....	.....	16: 3079, 3163–3165.
.....	1892	1878.....	1878	.....	Yes [a]....	Eclipse Works.....	Yes....	Yes....	Yes....	17: 3368.
.....	1887	1878.....	1878	.....	Yes.....	Paine, Ablett & Co. (partnership), and Excelsior Refinery.....	Yes....	Yes....	Yes....	17: 3262, 3353.
.....	(c)	Before 1880.....	1880	Yes.....	No.....	.....	.....	Yes....	Yes....	17: 3354.
sburg [b].....	1889	Before 1873.....	1876	Yes.....	No.....	.....	Yes....	Yes....	Yes....	Defendants' Exhibit 282.
burg [b].....	1890	About 1887.....	1890	Yes.....	No.....	.....	.....	.....	Yes....	17: 3332.
delphia.....	1890	About 1887.....	1890	Yes.....	No.....	.....	.....	.....	Yes....	17: 3332.
.....	(c)	Not given.....	1877	Yes.....	No.....	.....	Yes....	.....	.....	16: 3086.
ncerns.										
burg).....	1901	1888 [e].....	1888	.....	Yes [a]....	Presumably minority interests were previously in independent business.	.....	.....	Yes....	Defendants' Exhibit 272.
ladelphia).....	1892	Before 1890.....	1890	Yes.....	No.....	.....	.....	.....	Yes....	Defendants' Exhibit 272.
.....	1906	Before 1902.....	1902	Yes.....	No.....	.....	.....	.....	.....	Defendants' Exhibit 273.
.....	.....	1905.....	1905	.....	Yes.....	.....	.....	.....	.....	
.....	.....	1893.....	1893	.....	Yes.....	Firm of same name.....	.....	.....	.....	17: 3389.
.....	.....	1880.....	1881	Yes.....	No.....	.....	.....	Yes....	Yes....	17: 3359.
.....	.....	1885 [e].....	1885	.....	Yes [a]....	Minority interests previously in independent business.....	.....	.....	Yes....	17: 3390.
.....	.....	Before 1880.....	1880	Yes.....	No.....	.....	.....	Yes....	Yes....	17: 3369.

nd later to Atlantic.

[d] This company apparently acquired in Empire Transportation Company deal of 1877. (See vol. 16, p. 3066.)
[e] Petitioner's Exhibit No. 257.
[f] Plant consolidated with Standard Oil Company of New York, but company still in existence.

Companies now controlled by the Standard Oil Company, companies whose property they have taken over which were previously controlled by Standard interests, a[nd] competitors of the Standard interests—Continued.

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Domestic refining, marketing, and manufacturing companies—Continued.

(1) Name of present company.	(2) Successor to property of following concerns previously controlled by Standard Oil interests.		(3) Date of organization.	(4) Date of acquisition of stock by Standard Oil interests.	(5) Previously competitor of Standard Oil interests.	(6) Organized by Standard Oil interests (yes or no).	(7) Organized to take over the following concerns p[re]viously Standard Oil interests.
	Names.	Date of such succession.					
	Marketing concerns—Continued.						
Gilbert & Barker Manufacturing Co			Before 1884	1884	Yes	No	
Galena-Signal Oil Co			1901	1901		Yes	
	Signal Oil Works (Limited)[a]	1901	Before 1879	1879	Yes	No	
	Galena Oil Works (Limited)[b]	1901	Before 1879	1879	Yes	No	
Pennsylvania Lubricating Co			1895	1895		Yes [c]	Previous concern making mill greases.
Solar Refining Co			1885	1885		Yes	
Standard Oil Company of California (name changed from Pacific Coast Oil Co., 1906).			Before 1900	1900	Yes	No	
Standard Oil Company of Indiana			1889	1889		Yes	
	Marketing concerns.[d]						
	P. C. Hanford Oil Co.[e]	1891	1883 [f]	1883		Yes [c]	Marketing business of P. C. Hanford
	Standard Oil Company of Illinois	1892	1890	1890		Yes	(Succeeded to P. C. Hanford Oil Co.)
	Standard Oil Company of Minnesota	1892	1886	1886		Yes	
	Consolidated Tank Line Co.[g]	1892	1878	1878		Yes [c]	Alexander McDonald & Co
	Chester Oil Company of Minnesota	1892	Before 1888	1888	Yes	No	
	Des Moines Oil Tank Line Co.[g]	1892	Before 1890	1890	Yes	No	
	Republic Oil Co.[h]	([i])	1901	1901		Yes	Scofield, Shurmer & Teagle
Standard Oil Company of Iowa			1885	1885		Yes [c]	Minority interests previously engaged in company also acquired stations from St[a]ndard of Ohio.
Standard Oil Company of Kansas			1892	1892		Yes	
Standard Oil Company of Kentucky			1886	1886		Yes	
	Marketing concerns.						
	Chess-Carley & Co. Successor to	1886	1881	1881		Yes	
	Chess-Garley & Co. (partnership)	1881	Before 1873	1873	Yes	No	
	Inland Oil Co	1901	1880	1880		Yes [c]	Hamilton & Miller (firm)

[a] Originally a limited partnership; incorporated in 1897 as Signal Oil Company.
[b] Originally a limited partnership; incorporated in 1897 as Galena Oil Company.
[c] With minority stockholders.
[d] Also acquired certain marketing stations from Standard Oil Company of Ohio and Standard Oil Company of Kentucky.
[e] Properties first transferred to Standard Oil Company of Illinois.
[f] Petitioner's Exhibit No. 257.

companies whose property they have taken over which were previously controlled by Standard interests, and origin of such companies, indicating which were previous competitors of the Standard interests—Continued.

Domestic refining, marketing, and manufacturing companies—Continued.

(2) s previously controlled by Standard Oil Interests.		(3)	(4)	(5)	(6)	(7)	(8) Concern was party to—			(9)
es.	Date of such succession.	Date of organization.	Date of acquisition of stock by Standard Oil interests.	Previously competitor of Standard Oil interests.	Organized by Standard Oil interests (yes or no).	Organized to take over the following concerns previously competing with Standard Oil interests.	Trust of 1879.	Trust of January 1, 1882.	Trust at some time in 1882-1892.	Reference to evidence regarding previous competition (columns 5 and 7).
s—Continued.										
		Before 1884	1884	Yes	No				Yes	Defendant's Exhibit 271.
		1901	1901		Yes					
	1901	Before 1879	1879	Yes	No			Yes	Yes	17:3366.
	1901	Before 1879	1879	Yes	No		Yes	Yes	Yes	17:3366.
		1895	1895		Yes [c]	Previous concern making mill greases				Defendant's Exhibit 271.
		1885	1885		Yes				Yes	
		Before 1900	1900	Yes	No					17:3391, 3405.
		1889	1889		Yes				Yes	
concerns.[d]										
	1891	1883 [f]	1883		Yes [c]	Marketing business of P. C. Hanford			Yes	17:3398.
is	1892	1890	1890		Yes	(Succeeded to P. C. Hanford Oil Co.)			Yes	
sota	1892	1886	1886		Yes				Yes	
	1892	1878	1878		Yes [c]	Alexander McDonald & Co	Yes	Yes	Yes	17:3360.
ota	1892	Before 1888	1888	Yes	No				Yes	Defendant's Exhibit 272.
	1892	Before 1890	1890	Yes	No				Yes	Defendant's Exhibit 272.
	([e])	1901	1901		Yes	Scofield, Shurmer & Teagle				17:3338.
		1885	1885		Yes [c]	Minority interests previously engaged in marketing business; company also acquired stations from Standard Oil Company of Ohio.			Yes	17:3394.
		1892	1892		Yes					
		1886	1886		Yes				Yes	
concerns.										
	1886	1881	1881		Yes			Yes	Yes	
ship)	1881	Before 1873	1873	Yes	No		Yes			17:3359.
	1901	1880	1880		Yes [c]	Hamilton & Miller (firm)		Yes	Yes	17:3361.

mpany.
ompany.

[d] Also acquired certain marketing stations from Standard Oil Company of Ohio and Standard Oil Company of Kentucky.
[e] Properties first transferred to Standard Oil Company of Illinois.
[f] Petitioner's Exhibit No. 257.

[g] Properties first transferred to Standard Oil Company of Kentucky.
[h] Some properties also transferred to Standard Oil Company of Ohio.
[i] About 1906.

Companies now controlled by the Standard Oil Company, companies whose property they have taken over which were previously controlled by Standard interests, and competitors of the Standard interests—Continued.

Domestic refining, marketing, and manufacturing companies—Continued.

(1)	(2)		(3)	(4)	(5)	(6)	(7)
Name of present company.	Successor to property of following concerns previously controlled by Standard Oil interests.		Date of organization.	Date of acquisition of stock by Standard Oil interests.	Previously competitor of Standard Oil interests.	Organized by Standard Oil interests (yes or no).	Organized to take over the following concerns previously controlled by Standard Oil interests.
	Names.	Date of such succession.					
	Marketing concerns—Continued.						
Standard Oil Company of Kentucky	Monarch Oil Co	1899	Before 1887	1887	Yes	No	
	White's Golden Lubricator Co.	1902	Before 1889	1889	Yes	No	
	Consolidated Tank Line Co	(a)	(a)	(a)	(a)	(a)	(a)
Standard Oil Company of Nebraska			1906	1906		Yes	
Standard Oil Company of New Jersey			1882	1882		Yes	
	Refining concerns.						
	Producers Consolidated Land and Petroleum Co.[b]	1882	Before 1877	1877	Yes	No	
	Eagle Oil Company	1892	1883	1883		Yes	
	Camden Consolidated Oil Co	1892	1875	1875		Yes	J. N. Camden & Co., and Poole Refinery.
	Baltimore United Oil Co	1892	1877	1877		Yes [c]	C. West & Sons; Merritt, Jones & Co.; J. P. Mrs. Sylvia C. Hunt; Jas. C. Christoph Co.; Harry Reed; George Hammel.
	Other companies.						
	McKirgan Oil Company (Marketing, Newark, N. J.)	1891	1883	1883		Yes [c]	Presumably minority interests were previou business.
	New Jersey Oil Co (Marketing, Newark, N. J.)	1895	Before 1890	1890	Yes	No	
	United Refiners Export Co (Marketing, Perth Amboy, N. J.)	1897	Before 1886	1886	Yes	No	
	New Jersey Storage Co (Warehouses, etc., at Bayonne, N. J.)	(d)	Before 1899	1899	(e)	No	
Standard Oil Company of New York			1882	1882		Yes	
	Refining concerns.						
	Long Island Oil Co.[f]	1882	Before 1873	1873	Yes	No	
	Devoe Manufacturing Co	1892	Before 1874	1874 [g]	Yes	No	
	Charles Pratt & Co.[h]	1892	Before 1874	1874	Yes	No	
	Sone & Fleming Manufacturing Co	1892	Before 1877	1877	Yes	No	

[a] See under Standard Oil Company of Indiana, above.
[b] Also owned crude-oil-producing property subsequently transferred to Forest Oil Company and by it to South Penn Oil Company. Refining property transferred to Standard Oil Company of Ohio before 1882, and by it transferred to Standard Oil Company of New Jersey.
[c] With minority stockholders.
[d] Not given.
[e] Not stated.
[f] Property had previously been transferred to Standard Oil Company of Ohi
[g] Approximate date.
[h] Name changed to Pratt Manufacturing Company in 1884.

companies whose property they have taken over which were previously controlled by Standard interests, and origin of such companies, indicating which were previous competitors of the Standard interests—Continued.

Domestic refining, marketing, and manufacturing companies—Continued.

(2) erns previously controlled by Standard Oil interests.		(3)	(4)	(5)	(6)	(7)	(8) Concern was party to—			(9)
ames.	Date of such succession.	Date of organization.	Date of acquisition of stock by Standard Oil interests.	Previously competitor of Standard Oil interests.	Organized by Standard Oil interests (yes or no).	Organized to take over the following concerns previously competing with Standard Oil interests.	Trust of 1879.	Trust of January 1, 1882.	Trust at some time in 1882–1892.	Reference to evidence regarding previous competition (columns 5 and 7).
erns—Continued.										
	1899	Before 1887	1887	Yes	No				Yes	Defendants' Exhibit 272.
	1902	Before 1889	1889	Yes	No				Yes	Defendants' Exhibit 272.
	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	
		1906	1906		Yes					
		1882	1882		Yes				Yes	
concerns.										
and Petroleum Co.[b]	1882	Before 1877	1877	Yes	No		Yes	Yes	Yes	16:3213.
	1892	1883	1883		Yes				Yes	
	1892	1875	1875		Yes	J. N. Camden & Co., and Poole Refinery	Yes	Yes	Yes	16:3092, 3174.
	1892	1877	1877		Yes [c]	C. West & Sons; Merritt, Jones & Co.; J. Parkhurst, jr., & Co.; Mrs. Sylvia C. Hunt; Jas. C. Christopher; Robt. Reed & Co.; Harry Reed; George Hammel.	Yes	Yes	Yes	16:3175; 5:2203.
ompanies.										
. J.)	1891	1883	1883		Yes [c]	Presumably minority interests were previously in independent business.			Yes	Defendants' Exhibit 272.
. J.)	1895	Before 1890	1890	Yes	No				Yes	Defendants' Exhibit 272.
boy, N. J.)	1897	Before 1886	1886	Yes	No				Yes	Defendants' Exhibit 272.
Bayonne, N. J.)	(d)	Before 1899	1899	(e)	No					Defendants' Exhibit 273.
		1882	1882		Yes				Yes	
g concerns.										
	1882	Before 1873	1873	Yes	No		Yes			16:3075.
	1892	Before 1874	1874 *g*	Yes	No		Yes	Yes	Yes	16:3076, 3162.
	1892	Before 1874	1874	Yes	No		Yes	Yes	Yes	16:3079, 3151.
ng Co.	1892	Before 1877	1877	Yes	No		Yes	Yes	Yes	16:3085.

pany and by it to South Penn Oil Company. Refining property transferred to Standew Jersey.

[e] Not stated.
[f] Property had previously been transferred to Standard Oil Company of Ohio, by it transferred to Standard Oil Company of New Jersey.
[g] Approximate date.
[h] Name changed to Pratt Manufacturing Company in 1884.

Companies now controlled by the Standard Oil Company, companies whose property they have taken over which were previously controlled by Standard interest competitors of the Standard interests—Continued.

Domestic refining, marketing, and manufacturing companies—Continued.

(1) Name of present company.	(2) Successor to property of following concerns previously controlled by Standard Oil interests. Names.	Date of such succession.	(3) Date of organization.	(4) Date of acquisition of stock by Standard Oil interests.	(5) Previously competitor of Standard Oil interests.	(6) Organized by Standard Oil interests (yes or no).	(7) Organized to take over the following co Standard Oil i
	Refining concerns—Continued.						
Standard Oil Company of New York	Atlas Refining Co	1892	Before 1882	1882	Yes	No	
	Vesta Oil Works (Incorporated). Successor to—	1884	1882	1882		Yes [a]	
	Vesta Oil Works (partnership)	1882	Before 1880	1880 [b]	Yes	No	
	Central Refining Co	1900	Before 1883	1883	Yes	No	
	Empire Refining Co	(c)	(c)	(c)	(c)	(c)	(c)
	Bush & Denslow Manufacturing Co	1892	1879	1880	Yes	No	
	Maverick Oil Co	1892	1877	1877		Yes [a]	Maverick Oil Works, and Carter, Boston).
	Beacon Oil Co.[d]	1892	1879	1877		Yes [a]	Kidder, Vaughn & Co., Boston, w by Maverick Oil Co.
	Portland Kerosene Oil Co. (Maine)	1892	Before 1878	1878	Yes	No	
	Other companies.						
	Thompson & Bedford Co. Successor to	1892	1880	1880		Yes [a]	[3]
	Thompson, Bedford & Co. (firm)	1880	Not given	(c)	Yes	No	
	American Wick Manufacturing Co	1892	1884 [f]	1884		Yes	
	Oswego Manufacturing Co. (cooperage)	1892	1884	1884		Yes	
	Mehlen's Family Oil Co. (Marketing to consumers in Long Island.)	1892	Before 1889	1889	Yes	No	
Standard Oil Co., Ohio			1870	1870		Yes	(The original Standard Company).
	American Lubricating Oil Co	1888	1878	1878		Yes [a]	American Lubricating Oil Co. an Axle Grease Co.
	L. D. Mix Oil & Naphtha Co. (Marketing in Cleveland.)	1891	Before 1891	1891	Yes [g]	No	
	West Michigan Oil Co. (Marketing.)	1889	Before 1888	1888	Yes	No	
Swan & Finch Co			1891	1891		Yes [a]	
	Swan & Finch (firm)	1891	Before 1880	1880 [h]	Yes	No	
Underhay Oil Co			1890	1890		Yes	Underhay & Co. (marketing comp
United Oil Co			1887	1887		No	Standard acquired a minority int Standard purchases entire outpu

[a] With minority stockholders.
[b] See above.
[c] Not given.
[d] Property first transferred to Maverick Oil Company in 1899.
[f] [illegible] Exhibit No. 257.

npanies whose property they have taken over which were previously controlled by Standard interests, and origin of such companies, indicating which were previous competitors of the Standard interests—Continued.

Domestic refining, marketing, and manufacturing companies—Continued.

(2) previously controlled by Standard Oil interests.		(3)	(4)	(5)	(6)	(7)	(8) Concern was party to—			(9)
.	Date of such succession.	Date of organization.	Date of acquisition of stock by Standard Oil interests.	Previously competitor of Standard Oil interests.	Organized by Standard Oil interests (yes or no).	Organized to take over the following concerns previously competing with Standard Oil interests.	Trust of 1879.	Trust of January 1, 1882.	Trust at some time in 1882–1892.	Reference to evidence regarding previous competition (columns 5 and 7).
—Continued.										
	1892	Before 1882	1882	Yes	No				Yes	17 : 3396.
	1884	1882	1882		Yes [a]				Yes	
)	1882	Before 1880	1880 [b]	Yes	No					17 : 3397.
	1900	Before 1883	1883	Yes	No				Yes	17 : 3397.
	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	(c)	
Co.	1892	1879	1880	Yes	No			Yes	Yes	17 : 3358.
	1892	1877	1877		Yes [a]	Maverick Oil Works, and Carter, Windsor & Co. (refinery at Boston).	Yes	Yes	Yes	17 : 3357.
	1892	1879	1877		Yes [a]	Kidder, Vaughn & Co., Boston, which was previously owned by Maverick Oil Co.		Yes	Yes	17 : 3357.
)	1892	Before 1878	1878	Yes	No			Yes	Yes	17 : 3364.
panies.										
	1892	1880	1880		Yes [a]			Yes	Yes	
rm)	1880	Not given	(d)	Yes	No					17 : 3368.
o	1892	1884 [f]	1884		Yes				Yes	
erage)	1892	1884	1884		Yes				Yes	
	1892	Before 1889	1889	Yes	No				Yes	Defendants' Exhibit 272.
n Long Island.)										
		1870	1870		Yes	(The original Standard Company)	Yes	Yes	Yes	
	1888	1878	1878		Yes [a]	American Lubricating Oil Co. and Mica Steam Packing & Axle Grease Co.	Yes	Yes	Yes	16 : 3084, 3173.
	1891	Before 1891	1891	Yes [g]	No				Yes	Defendants' Exhibit 272.
	1889	Before 1888	1888	Yes	No				Yes	Defendants' Exhibit 272.
		1891	1891		Yes [a]				Yes	
	1891	Before 1880	1880 [h]	Yes	No				Yes	17 : 3395.
		1890	1890		Yes	Underhay & Co. (marketing company in Boston)			Yes	Defendants' Exhibit 271.
		1887	1887		No	Standard acquired a minority interest, which it still holds; Standard purchases entire output (see Brief, vol. 2, p. 157).			Yes	

[a] See above.
[b] Property first transferred to Maverick Oil Company in 1880.
[c] Not given.
[d] Petitioner's Exhibit No. 257.
[g] According to defendants' Exhibit 272 it bought its supplies from the Standard.
[h] One-half interest acquired by Thompson & Bedford in 1880.

Companies now controlled by the Standard Oil Company, companies whose property they have taken over which were previously controlled by Standard interests, and competitors of the Standard interests—Continued.

Domestic refining, marketing, and manufacturing companies—Continued.

(1) Name of present company.	(2) Successor to property of following concerns previously controlled by Standard Oil interests.		(3) Date of organization.	(4) Date of acquisition of stock by Standard Oil interests.	(5) Previously competitor of Standard Oil interests.	(6) Organized by Standard Oil interests (yes or no).	(7) Organized to take over the following concerns previously controlled by Standard Oil interests.
	Names.	Date of such succession.					
	Other companies—Continued.						
Vacuum Oil Co.			Before 1879.	1879	Yes.	No.	
	Acme Oil Company of New York [a]	1902	(b)	(b)	(b)	(b)	(b)
Waters-Pierce Oil Co. (Reorganized in 1900.)			1878.	1878		Yes [c]	Waters, Pierce & Co.
	Pipe line companies.						
National Transit Co.			1881.	1881		Yes [c]	
	United Pipe Lines. Organized to take over following:	1883 [d]	1877.	1877		Yes [c]	
	United Pipe Lines (partnership)	1877	Before 1874.	1874 [e]	(f)	No.	
	Antwerp Pipe Co.	1877			(f)	No.	
	Pennsylvania Transportation Co.	1877			(f)	No.	
	Union Pipe Co.	1877			(f)	No.	
	Grant Pipe Line	1877			(f)	No.	
	Relief Pipe Line	1877			(f)	No.	
	Karns Pipe Line	1877			(f)	No.	
	Hunter & Cummings	1877			(f)	No.	
	Sandy Pipe Co.	1877			(f)	No.	
	Milton Pipe Line	1877			(f)	No.	
	Keystone Pipe Co.	1877			(f)	No.	
	Oil City Pipe Co.	1877			(f)	No.	
	Clarion Pipe Line	1877			(f)	No.	
	Columbia Conduit Co.	(g)	About 1875.	1877	Yes.	No.	
	American Transfer Co.	1881	Before 1874.	1874 [e]	(f)	No.	
	Western and Atlantic Pipe Line Co. [h]		Before 1890.	1890	Yes.	No.	
	Smith's Ferry Oil Transportation Co.	(i)	1872.	1878	Yes.	No.	

[a] Works first transferred to Standard of New York in 1892; these works, at Olean, N. Y., had been constructed by Acme Oil Company.
[b] See above, under Atlantic Refining Co.
[c] With minority stockholders.
[d] Stock of company acquired by National Transit in 1881, previously held by Standard interests; properties acquired in 1883.
[e] Approximate date.
[f] How far these companies had previously competed with each other and with Stan
p. 43.
[g] After 1879.
[h] It does not appear clearly whether these lines were transferred to the National Tran
[i] Not given.

…y, companies whose property they have taken over which were previously controlled by Standard interests, and origin of such companies, indicating which were previous competitors of the Standard interests—Continued.

Domestic refining, marketing, and manufacturing companies—Continued.

(2) Concerns previously controlled by Standard Oil interests.		(3)	(4)	(5)	(6)	(7)	(8) Concern was party to—			(9)
Names.	Date of such succession.	Date of organization.	Date of acquisition of stock by Standard Oil interests.	Previously competitor of Standard Oil interests.	Organized by Standard Oil interests (yes or no).	Organized to take over the following concerns previously competing with Standard Oil interests.	Trust of 1879.	Trust of January 1, 1882.	Trust at some time in 1882–1892.	Reference to evidence regarding previous competition (columns 5 and 7).
…panies—Continued.										
……	……	Before 1879……	1879	Yes……	No……	……	……	Yes….	Yes….	17:3370.
…York [a]……	1902	(b)	(b)	(b)	(b)	(b)	(b)	(b)	(b)	(b)
……	……	1878……	1878	……	Yes [c]….	Waters, Pierce & Co……	Yes….	Yes….	Yes….	17:3279.
Pipe line companies.										
……	……	1881……	1881	……	Yes [c]….	……	……	Yes….	Yes….	
……	1883 [d]	1877……	1877	……	Yes [c]….	……	Yes….	……	……	
…following:										
…(partnership)……	1877	Before 1874……	1874 [e]	(f)	No……	……	……	……	……	
……	1877	……	……	(f)	No……	……	……	……	……	
…nsportation Co……	1877	……	……	(f)	No……	……	……	……	……	
……	1877	……	……	(f)	No……	……	……	……	……	
……	1877	……	……	(f)	No……	……	……	……	……	
……	1877	……	……	(f)	No……	……	……	……	……	
……	1877	……	……	(f)	No……	……	……	……	……	
…ngs……	1877	……	……	(f)	No……	……	……	……	……	
……	1877	……	……	(f)	No……	……	……	……	……	
……	1877	……	……	(f)	No……	……	……	……	……	
……	1877	……	……	(f)	No……	……	……	……	……	
……	1877	……	……	(f)	No……	……	……	……	……	
……	1877	……	……	(f)	No……	……	……	……	……	
……	(g)	About 1875……	1877	Yes……	No……	……	Yes….	……	……	6:3015.
……	1881	Before 1874……	1874 [e]	(f)	No ……	……	Yes …	……	……	16:3093.
…Line Co. [h]……	……	Before 1890……	1890	Yes……	No……	……	……	……	Yes….	6:3134; 17:3331.
…rtation Co……	(i)	1872……	1878	Yes……	No……	……	Yes….	Yes….	Yes….	

…Y., had been constructed by Acme Oil Company.

…rd interests; properties acquired in 1883.

[f] How far these companies had previously competed with each other and with Standard interests is not clear, but apparently they were at some time competitors; see *ante*, p. 43.

[g] After 1879.

[h] It does not appear clearly whether these lines were transferred to the National Transit or simply ceased business; company liquidated in 1894.

[i] Not given.

Companies now controlled by the Standard Oil Company, companies whose property they have taken over which were previously controlled by Standard interests, and origi
the Standard interests—Continued.

Pipe line companies—Continued.

(1) Name of present company.	(2) Successor to property of following concerns previously controlled by Standard Oil interests.		(3) Date of organization.	(4) Date of acquisition of stock by Standard Oil interests.	(5) Previously competitor of Standard Oil interests.	(6) Organized by Standard Oil interests (yes or no).	(7) Organized to take over the following concern Standard Oil intere
	Names.	Date of such succession.					
Tide Water Pipe Co.			About 1879	1883	Yes	No	Standard acquired a minority inte and entered pooling agreement.
Crescent Pipe Line Co.			Before 1895	1895	Yes	No	
Indiana Pipe Line Co.			1891	1891		Yes	
Buckeye Pipe Line Co.			1886	1886		Yes	
	Cygnet Pipe Line	1892	1889	1889		Yes	
	Connecting Pipe Line Co.	1892	1889	1889		Yes	
	Macksburg Pipe Line	1892	1886	1886		Yes	
Cumberland Pipe Line Co.			1901	1901		Yes	
Eureka Pipe Line Co.			1890	1890		Yes	
Franklin Pipe Co.			Before 1879	1879 [a]		No	
New York Transit Co.			1892	1892		Yes	
Northern Pipe Line Co.			1889	1889		Yes	
Southern Pipe Line Co.			1890	1890		Yes	
South West Pennsylvania Pipe Lines			1885	1885		Yes	
Prairie Oil and Gas Co.[b]			Not given			Yes	

[a] Minority interest only acquired and still held.

[b] Also engaged in crude-oil production.

...ies whose property they have taken over which were previously controlled by Standard interests, and origin of such companies, indicating which were previous competitors of the Standard interests—Continued.

Pipe line companies—Continued.

(2) ...s previously controlled by Standard Oil interests.		(3)	(4)	(5)	(6)	(7)	(8) Concern was party to—			(9)
...s.	Date of such succession.	Date of organization.	Date of acquisition of stock by Standard Oil interests.	Previously competitor of Standard Oil interests.	Organized by Standard Oil interests (yes or no).	Organized to take over the following concerns previously competing with Standard Oil interests.	Trust of 1879.	Trust of January 1, 1882.	Trust at some time in 1882–1892.	Reference to evidence regarding previous competition (columns 5 and 7).
.....	.....	About 1879.....	1883	Yes.....	No.....	Standard acquired a minority interest, which it still holds, and entered pooling agreement.	.....	.....	Yes....	17:3320.
.....	.....	Before 1895....	1895	Yes.....	No.....	.....	.....	.....	.....	17:3325.
.....	.....	1891.....	1891	.....	Yes.....	.....	.....	.....	Yes....	
.....	.....	1886.....	1886	.....	Yes.....	.....	.....	.....	Yes....	
.....	1892	1889.....	1889	.....	Yes.....	.....	.....	.....	Yes....	
.....	1892	1889.....	1889	.....	Yes.....	.....	.....	.....	Yes....	
.....	1892	1886.....	1886	.....	Yes.....	.....	.....	.....	Yes....	
.....	.....	1901.....	1901	.....	Yes.....	.....	.....	.....	.....	
.....	.....	1890.....	1890	.....	Yes.....	.....	.....	.....	Yes....	
.....	.....	Before 1879.....	1879 [a]	.....	No.....	.....	.....	Yes....	Yes....	
.....	.....	1892.....	1892	.....	Yes.....	.....	.....	.....	Yes....	
.....	.....	1889.....	1889	.....	Yes.....	.....	.....	.....	Yes....	
.....	.....	1890.....	1890	.....	Yes.....	.....	.....	.....	Yes....	
.....	.....	1885.....	1885	.....	Yes.....	.....	.....	.....	Yes....	
.....	.....	Not given.....	.....	.....	Yes.....	.....	.....	.....	.....	

[a] Minority interest only acquired and still held.

[b] Also engaged in crude-oil production.

List of refining and marketing companies whose stock was formerly held by Standard interests but which are no longer in existence, no record being given

(1) Name of company.	(2) Date of organization.	(3) Date of acquisition of stock by Standard Oil interests.	(4) Previously competitor of Standard Oil interests.	(5) Organized by Standard Oil interests (yes or no).	(6) Organized to take over the fo ously competing with Sta
Union Refining Co.	Before 1882	1882	Yes	No	
Star Oil Co. (Erie, Pa.) [a]	(b)	(b)	(b)	(b)	
Model Oil Co. (Pittsburg)	Before 1874	1874	Yes	No	
Keystone Refining Co. (Titusville)	1876	1876		Yes	Comfort, Pickering & C
Republic Refining Co.[a]	(b)	(b)	(b)	(b)	
H. C. Van Tine & Co. (Pittsburg)	1879	1879		Yes	Diamond Works
Globe Oil Co. (marketing in Minnesota)	Before 1887	1887	Yes	No	
Standard Oil Co. of Missouri	1896	1896		Yes	
Argand Refining Co.	Before 1898	1898	Yes	No	
Olean Petroleum Co. (Limited) [a]	(b)	(b)	(b)	(b)	

[a] Listed in trust agreement of 1879, Defendants' Exhibit 257.

ose stock was formerly held by Standard interests but which are no longer in existence, no record being given of transfer of properties to other Standard concerns.

	(2) Date of organization.	(3) Date of acquisition of stock by Standard Oil interests.	(4) Previously competitor of Standard Oil interests.	(5) Organized by Standard Oil interests (yes or no).	(6) Organized to take over the following concerns previously competing with Standard Oil interests.	(7) Concern was party to— Trust of 1879.	Trust of January 1, 1882.	Trust at some time in 1882–1892.	(8) Reference to evidence regarding previous competition (columns 4 and 6).
.....	Before 1882....	1882	Yes.....	No.....	.....	.....	.....	Yes.....	Defendants' Exhibit 272.
.....	(b)	(b)	(b)	(b)	.....	Yes.....	.....	.....	
.....	Before 1874....	1874	Yes.....	No.....	.....	Yes.....	.....	.....	
.....	1876.....	1876	.....	Yes.....	Comfort, Pickering & Chambers.....	Yes.....	Yes.....	Yes.....	Defendants' Exhibit 282.
.....	(b)	(b)	(b)	(b)	.....	Yes.....	.....	.....	
.....	1879.....	1879	.....	Yes.....	Diamond Works.....	.....	Yes.....	Yes.....	17 : 3371.
.....	Before 1887....	1887	Yes.....	No.....	.....	.....	.....	Yes.....	Defendants' Exhibit 272.
.....	1896.....	1896	.....	Yes.....	.....	.....	.....	.....	
.....	Before 1898....	1898	Yes.....	No.....	.....	.....	.....	.....	17 : 3337.
.....	(b)	(b)	(b)	(b)	.....	Yes.....	.....	.....	

st agreement of 1879, Defendants' Exhibit 257.

b No Information.

APPENDIX D.

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APPENDIX D.

Partial list of concerns acquired by Standard Oil interests since the organization of the Standard Oil Company of Ohio in 1870—Continued.

REFINING AND MANUFACTURING CONCERNS.

Name and date.	Location.	Method of acquisition.			Remarks.	References.
		Stock purchase.	Property purchase.	Property purchase through company organized for that purpose.		
1871–72.						
Clark, Payne & Co.	Cleveland		*			16:3160.
A. M. Burk	do		*			16:3160.
Henry C. Smith	do		*			16:3160; 6:2626.
Kellogg, Goodwillie & Co.	do		*			16:3160; 6:2626.
F. Q. Barstow & Co.	do		*			16:3159; 6:2626.
Brainerd, Barkwell & Co.	do		*			16:3159; 6:2626.
Hanna, Baslington & Co.	do		*			16:3159; 6:2626.
Joseph Stanley	do		*			16:3159; 6:2625.
Harmon, Borne & Co.	do		*			16:3159; 6:2626.
Short, Neill & Co.	do		*			16:3159; 6:2626.
Case & Reynolds	do		*			6:2626.
Critchley, Fawcett & Co.	do		*			16:3159; 6:2625.
Stewart & Arter	do		*			16:3159; 6:2626.
Westlake, Hutchins & Co.	do		*			16:3159; 6:2626.
Alexander Scofield & Co.	do		*			16:3159; 6:2625.
Clark, Shurmer & Co.	do		*			16:3159; 6:2625.
Doane & Co.	do		*			6:2625.

1873.						
Long Island Oil Co.	New York Harbor.	*				16:3075; Defendant's Exhibit 257.
Chess-Carley Co.	Louisville and South generally.	*			Also marketing.	17:3359.
1874.						
Charles Pratt & Co.	New York Harbor.	*				16:3079, 3151.
De Voe Manufacturing Co.	do.	*				16:3076, 3162.
Imperial Refinery.	Oil City.	*				16:3079, 3163.
Standard Oil Co. of Pittsburg.	Pittsburg.	*			Also marketing.	16:3081, 3168.
Model Oil Co.	do.	*				16:3081; Defendants' Exhibit 257.
Lockhart & Frew:						
Nonpareil Refinery.	do.	*				6:2630; 16:3080.
Brilliant Refinery.	do.	*				6:2630; 16:3082.
Atlantic Refining Co.	Philadelphia.	*				16:3080, 3166–67.
1875.						
J. N. Camden & Co.	Parkersburg, W. Va.			*		16:3091, 3174.
Poole Refinery.	do.			*		16:3091, 3174.
Bennett, Warner & Co.	Titusville.			*		16:3083, 3168; 17:3342.
Porter, Moreland & Co.	do.			*		16:3083, 3168; 17:3342.
About 1875.						
R. H. Lee.	Titusville or vicinity.		*			6:3240.
John Jackson.	do.		*			6:3240.
Octave Oil Co.	do.		*			6:3240.
Easterly & Davis.	do.		*			6:3240.

Partial list of concerns acquired by Standard Oil interests since the organization of the Standard Oil Company of Ohio in 1870—Continued.

REFINING AND MANUFACTURING CONCERNS—Continued.

Name and date.	Location.	Method of acquisition.			Remarks.	References.
		Stock purchase.	Property purchase.	Property purchase through company organized for that purpose.		
1876.						
Central Refining Co.	Pittsburg	*				Defendants' Exhibit 282.
Comfort, Pickering & Chambers.	Titusville			*		Do.
1877.						
Carter, Windsor & Co.	Boston			*	Possibly same as Maverick Oil Works.	17:3357, 3272.
Maverick Oil Works	do			*		17:3357, 3272.
Sone & Fleming Manufacturing Co.	New York Harbor	*				16:3085.
Producers' Consolidated Land and Petroleum Co.	Bayonne, N. J.	*			Also crude-oil production.	16:3213.
Philadelphia Refining Co.	Philadelphia	*				16:3086; Defendant's Exhibit 257.

George Hammel	Baltimore			*		5:2204; 16:3175.
C. West & Sons	do			*		5:2203; 16:3175.
Harry Reed	do			*		5:2203; 16:3175.
Robert Reed & Co	do			*		5:2203; 16:3175.
James C. Christopher	do			*		5:2203; 16:3175.
Mrs. Sylvia C. Hunt	do			*		5:2203; 16:3175.
J. Parkhurst & Co	do			*		5:2203; 16:3175.
Merritt, Jones & Co	do			*		5:2203; 16:3175.
1878.						
Mica Steam Packing and Axle Grease Co.	Cleveland			*		16:3084, 3173.
American Lubricating Oil Co.	do			*		16:3084, 3172.
Portland Kerosene Oil Co	Maine	*				17:3364.
Excelsior Refinery	Freedom, Pa			*		17:3262, 3353.
Paine, Ablett & Co	Smith's Ferry, Pa			*		17:3262, 3353.
Eclipse Works	Franklin, Pa			*		17:3368.
About 1878.						
Citizens' Refinery	Pittsburg		*			6:2630, 3022.
1879.						
Vacuum Oil Co	Olean and Rochester.	*				17:3370.
Kidder, Vaughn & Co	Boston			*		17:3357.
Signal Oil Works (Limited)	Franklin, Pa	*				17:3366.
Galena Oil Works	do	*				17:3366.
Diamond Works	Pittsburg			*		17:3371.

Partial list of concerns acquired by Standard Oil interests since the organization of the Standard Oil Company of Ohio in 1870—Continued.

REFINING AND MANUFACTURING CONCERNS—Continued.

Name and date.	Location.	Method of acquisition.			Remarks.	References.
		Stock purchase.	Property purchase.	Property purchase through company organized for that purpose.		
During seventies.						
Bergen Point Refinery	New York Harbor		*			6:2632.
Wallabout Refinery	do		*			6:2632.
Peerless Refinery	do		*			6:2632.
Kings County Oil Co	do		*			6:2632.
Bishop & Heisel	Cleveland		*			16:3161.
Hanna, Chapin & Co	do		*			16:3160.
Backus Oil Co	do		*			16:3160.
Aladdin Oil Co	Pittsburg		*			6:2630.
David Bly & Co	do		*			6:2630.
R. S. Waring (Cosmos Refinery).	do		*			6:2630.
Livingston Brothers (Crystal Refinery).	do		*			6:2630.
William P. Logan & Co. (Eagle Refinery).	do		*			6:2630.

D. Hostetter (Fairview Refinery.	.....do.....	.....	*	.....	Hostetter was the builder of Columbia Conduit Pipe Line.	6:2630.
King & Goodman (Federal Refinery).	.....do.....	.....	*	.....	.....	6:2630.
John Speer & Co. (Iron City Refinery).	.....do.....	.....	*	.....	.....	6:2630.
T. Weisenberger (Keystone Refinery).	.....do.....	.....	*	.....	.....	6:2630.
Brooks, Ballantyne & Co. (Lilly Refinery).	.....do.....	.....	*	.....	.....	6:2630.
J. C. Kirkpatrick & Co.....	.....do.....	.....	*	.....	.....	6:2630.
J. A. McKee & Son (Liberty Refinery).	.....do.....	.....	*	.....	.....	6:2630.
H. S. A. Stewart (Penn Refinery).	.....do.....	.....	*	.....	.....	6:2630.
Republic Refining Co.....	Not given.....	*	.....	.....	.....	Defendants' Exhibit 257.
Star Oil Co.....	Erie, Pa.....	.....	*	.....	.....	Do.
R. J. Waring (Vesta Refinery).	Pittsburg.....	.....	*	.....	.....	6:2630.
E. J. Waring (Star Refinery).	.....do.....	.....	*	.....	.....	6:2630.
Elkins & Flack (Riverside Refinery).	.....do.....	.....	*	.....	.....	6:2630.
J. D. Stockdale (Radiant Refinery).	.....do.....	.....	*	.....	.....	6:2630.
Wormser, Meyers & Co. (Petrolite Refinery).	.....do.....	.....	*	.....	.....	6:2630.
Olean Petroleum Co. (Limited).	Olean (?).....	*	.....	.....	Possibly created by Standard interests.	Defendants' Exhibit 257.
Vesta Oil Works (Partnership).	New York Harbor..	*	.....	.....	.....	17:3397.

Partial list of concerns acquired by Standard Oil interests since the organization of the Standard Oil Company of Ohio in 1870—Continued.

REFINING AND MANUFACTURING CONCERNS—Continued.

Name and date.	Location.	Method of acquisition.			Remarks.	Reference.
		Stock purchase.	Property purchase.	Property purchase through company organized for that purpose.		
1880.						
Gregory Refinery [a]	New York Harbor		*			17:3323.
Yennie & Burke [a]	do		*			17:3323.
Wilson & Anderson [a]	do		*			17:3323.
McGoy & King [a]	do		*			17:3323.
A. S. Jenny & Sons [a]	do		*			17:3323.
Swan & Finch (firm)	New York	*				17:3395.
Bush & Denslow Manufacturing Co.	New York Harbor	*				17:3358.
Empire Refining Co	do	*				17:3369.
Solar Oil Co. (Limited)	Williamsport, Pa	*				17:3354.
Bush & Co. (Limited)	Philadelphia	*			Compounding lubricating oil.	17:3352.
1881.						
Chesebrough Manufacturing Co.	New York	*			Vaseline, etc	17:3359.

1882.						
Atlas Refining Co.	Buffalo	*				17:3396.
Union Refining Co.	Oil City	*				Defendants' Exhibit 272.
1883.						
Tide Water Oil Co.	New York Harbor	*			Minority interest only purchased, but pooling contract made. (See below, p. 136.) The company had 3 or 4 refineries in 1883. (See Exhibit 13 to petition.)	
Central Refining Co.	do	*				17:3397.
1884.						
Gilbert & Barker Manufacturing Co.	Boston	*			Manufacture of apparatus for making and utilizing gas.	Defendants' Exhibit 271.
About 1885.						
Dangler Refining Co.	Cleveland		*			6:3029.
Clark Brothers & Co.	do		*			6:3029.
Crystal Oil Co.	do		*			6:3029.
Woodland Oil Co.	do		*			6:3028, 3029.
Forest City Oil Co.	do		*			6:3029.

*1880 or earlier.

Partial list of concerns acquired by Standard Oil interests since the organization of the Standard Oil Company of Ohio in 1870—Continued.

REFINING AND MANUFACTURING CONCERNS—Continued.

Name and date.	Location.	Method of acquisition.			Remarks.	References.
		Stock purchase.	Property purchase.	Property purchase through company organized for that purpose.		
1886.						
Empire Oil Works	Pittsburg		*		Apparently leased earlier (6:2630).	6:3133; 17:3330.
Holdship & Irwin	do		*		Leased, 1878–1883; purchased, 1886.	6:2630, 3013, 3014.
1887.						
Logan, Emery & Weaver	Philadelphia		*			17:3340.
1890.						
Globe Refining Co., of Philadelphia.	Philadelphia	*				17:3331.
Globe Refining Co., of Pittsburg.	Pittsburg	*				17:3331.

1893.						
Borne-Scrymser Co.	New York			*		17:3389.
1895.						
Pennsylvania Lubricating Co.	Pittsburg			*	Mill greases. Name of previous concern not given.	Defendants' Exhibit 271.
Union Refining Co.[a]	Titusville		*		A combination of Western, National, and Schwartz refineries, listed below.	6:2843; 17:3339.
1895.						
Mutual Oil Works[a]	Reno, Pa.		*			6:2842; 17:3339; Petitioner's Exhibit 272 A.
National Refining Co.[a]	Titusville		*			6:2843; 17:3339.
Schwartz Refinery[a]	do		*			6:2843; 17:3339.
Western Refining Co.[a]	do		*			6:2843; 17:3339.
International Refinery	Reno, Pa.		*			6:2842; 17:3339.
1898.						
Argand Refining Co.	Marietta	*				17:3337.

* Approximate date.

Partial list of concerns acquired by Standard Oil interests since the organization of the Standard Oil Company of Ohio in 1870—Continued.

REFINING AND MANUFACTURING CONCERNS—Continued.

Name and date.	Location.	Method of acquisition.			Remarks.	References.
		Stock purchase.	Property purchase.	Property purchase through company organized for that purpose.		
About 1899.						
Indiana Pipe Line and Refining Co.[a]	Kankakee, Ill.	*			Also had a pipe line; listed under pipe-line concerns.	2:583; 17:3310.
Climax Oil Co.	Titusville		*			Petitioner's Exhibit 272 B; 17:3339.
Manhattan Oil Co.[a]	Galatea, Ohio	*			Also had pipe lines; listed under pipe-line concerns.	17:3337.
1900.						
Pacific Coast Oil Co.	California	*			Also crude-oil production.	17:3391, 3405.
Relief Oil Works [b]	Franklin		*			Petitioner's Exhibit 272 C.

1901.						
Schofield, Shurmer & Teagle.	Cleveland			*	Republic Oil Co., which took over this property, operated as a bogus independent concern.	17: 3319.
Oil Creek Refinery [b]	Not given		*			Petitioner's Exhibit 272 F.
Ellis & Cummings Refinery [b]	do		*			Petitioner's Exhibit 272 E.
About 1902.						
Leader Refining Co	Taylorstown, Pa		*			Petitioner's Exhibit 272 H.
Date not given.						
Pierce & Canterbury	Boston		*			12: 718.

MARKETING CONCERNS.

1878.						
Waters, Pierce & Co	Southwest			*		17: 3279.
Alexander McDonald & Co	Cincinnati, etc			*		17: 3360.
During seventies.						
Thompson, Bedford & Co. (firm).	New York	*			Marketing lubricating oil	17: 3368.

* Secret acquisition through General Industrials Development Syndicate; refining property later bought outright. [b] Approximate date.

Partial list of concerns acquired by Standard Oil interests since the organization of the Standard Oil Company of Ohio in 1870—Continued.

MARKETING CONCERNS—Continued.

Name and date.	Location.	Method of acquisition.			Remarks.	References.
		Stock purchase.	Property purchase.	Property purchase through company organized for that purpose.		
1880.						
Hamilton & Miller.....	Cincinnati.....	.....	.....	*	Marketing lubricating oil.	17: 3361.
1883.						
P. C. Hanford.....	Chicago.....	.....	.....	*	.....	17: 3398.
1885.						
Standard Oil Company of Iowa (minority interests).	Pacific coast.....	.....	.....	*	Names of previous concerns not stated.	17: 3394.
Isaac E. Blake.....	Rocky Mountain States.	.....	.....	*	.....	17: 3391.
1886.						
United Refiners Export	Perth Amboy.....	*	.....	.....	.....	Defendants' Exhibit 272.

1887.						
Monarch Oil Co.	Cincinnati and vicinity.	*				Defendants' Exhibit 272.
Globe Oil Co.	Minnesota	*				Do.
1888.						
West Michigan Oil Co.		*				Defendants' Exhibit 272.
Chester Oil Company of Minnesota.	Minnesota	*				Do.
1889.						
Mehlen's Family Oil Co.	Long Island City and vicinity.	*				Defendants' Exhibit 272.
White's Golden Lubricator Company.	Cincinnati	*				Do.
1890.						
Underhay & Co.	Boston			*		Defendants' Exhibit 271.
Blodgett-Moore Co.	Augusta, Ga., and other points.		*			5:2166.
New Jersey Oil Co.	Newark	*				Defendants' Exhibit 272.
Des Moines Oil Tank Line Co.	Iowa	*				Defendants' Exhibit 272; 2:958–59.
Electric Light Oil Co.	Philadelphia	*				Defendants' Exhibit 272

Partial list of concerns acquired by Standard Oil interests since the organization of the Standard Oil Company of Ohio in 1870—Continued.

MARKETING CONCERNS—Continued.

Name and date.	Location.	Method of acquisition.			Remarks.	References.
		Stock purchase.	Property purchase.	Property purchase through company organized for that purpose.		
1891.						
L. D. Mix Oil Co.....	Cleveland.....	*	.....	.....	.....	Defendants' Exhibit 272.
1892.						
Excelsior Oil Co.[a].....	Kansas.....	.....	*	.....	Subsequently run as a bogus independent concern.	3:1243–44.
Sutton Bros.[b].....	Kansas City, Mo....	.....	*	.....	Merged with Excelsior Oil Co.	3:1242–43.
1895.						
Oakdale Oil Works[c].....	Philadelphia.....	.....	*	.....	.....	2:851.
Nicolai Bros.....	Washington, D. C...	.....	*	.....	Subsequently run as a bogus independent concern.	13:1195.

1897.						
New American Oil Co.[a]	Ohio		*		Subsequently run as a bogus independent concern.	6:3037; 6:3046–3048.
1898.						
Commercial Oil Co	Atlanta		*			5:2098.
Peoples Oil Co	do		*		Subsequently run as a bogus independent concern.	5:2098; 5:2099.
1899.						
Cassetty Oil Company	Nashville, Tenn				Leased for 5 years and run as bogus independent concern.	12:953.
Protection Oil Co.[a]	Cincinnati, Ohio		*		Subsequently run as a bogus independent concern.	Petitioner's Exhibit 267; 2:716; 2:718.
Paragon Oil Co	Columbus		*		do	6:2809.
C. P. Wagner & Co.[a]			*		do	Petitioner's Exhibit 267 A; 2:718; 2:725; 5:2107.
Dixie Oil Company [a]	Various southern points.		*		do	5:2108.
Southern Oil Co	Richmond, Va		*		do	5:2358.

[a] Approximate date.

[b] Subsequent to 1892.

Partial list of concerns acquired by Standard Oil interests since the organization of the Standard Oil Company of Ohio in 1870—Continued.

MARKETING CONCERNS—Continued.

Name and date.	Location.	Method of acquisition.			Remarks.	References.
		Stock purchase.	Property purchase.	Property purchase through company organized for that purpose.		
1900.						
Vincennes Oil Co.[a]	Vincennes, Ind.		*		Subsequently run as a bogus independent concern.	2:721, 722.
International Oil Works [a]	St. Louis, Mo.		*		do	3:1113.
1901.						
Central Refining Co.[a]	Brazil, Ind.		*			5:2516–2517.
Crawfordsville Oil Co.[a]	Crawfordsville, Ind.		*			5:2515.
1902.						
Toledo Oil Works [a]	Toledo		*		Subsequently run as a bogus independent concern.	6:3053.

Independent Oil Co.	Washington, D. C.		*			13:1192.
F. P. Joyce Oil Delivery [a]	San Francisco		*			2:744.
Consumers Oil Co.[a]	Macon, Ga.		*			2:725.
Denlinger Brothers	Pittsburg	*				Defendants' Exhibit 273.
1904.						
Southeastern Oil Co.[a]	Atlanta		*			2:720; Petitioner's Exhibit 267 B.
Alabama Oil Co.[a]	Birmingham		*		Subsequently run as a bogus independent concern.	Petitioner's Exhibit 267 B; 2:721.
King Keystone Oil Co.[a]	San Francisco		*			2:742.
Arctic Oil Works[a]	Pacific Coast		*			2:741, 742.
C. F. Warner[a]	Not given		*			2:720; Petitioner's Exhibit 267 B.
Star Oil Co.[a]	Cincinnati		*		Subsequently run as a bogus independent concern.	2:719; Petitioner's Exhibit 267 B.
1905.						
Memphis Oil Co.[a]	Memphis		*			2:723.
Date not given.						
Southern Oil Tank Line	Louisville		*			2:715; Petitioner's Exhibit 267 A.
Eastern Oil and Gasoline Supply.	Boston		*			12:721.

[a] Approximate date.

Partial list of concerns acquired by Standard Oil interests since the organization of the Standard Oil Company of Ohio in 1870—Continued.

MARKETING CONCERNS—Continued.

Name and date.	Location.	Method of acquisition.			Remarks.	References.
		Stock purchase.	Property purchase.	Property purchase through company organized for that purpose.		
Date not given—Cont'd.						
Penn Oil Co.	Los Angeles.		*			2:743.
Brooks Oil Co.	Indianapolis.		*		Subsequently run as a bogus independent concern.	2:720; Petitioner's Exhibit 267 B.
Illinois Oil Co.	Joliet, Ill.		*			2:756.
Mutual Oil Co.	Dayton, Ohio.		*			2:716.
Peuss Oil Co.	Baltimore and Washington.		*			5:2367.
Liberty Oil Co.	Boston.		*		Subsequently run as a bogus independent concern.	3:1511.
Funke Bros.	Brooklyn.		*		do.	3:1510.

1874.						
American Transfer Co.		*				16:3093, 3175.
United Pipe Lines (partnership).		*				16:3093.
1877.						
Columbia Conduit Co.			*			6:3015, 3322.
Oil City Pipe Co.				*		6:3321, 3327.
Keystone Pipe Co.				*		6:3321, 3327.
Milton Pipe Line.				*		6:3321, 3327.
Sandy Pipe Co.				*		6:3321, 3327.
Karns Pipe Line.				*		6:3321, 3327.
Relief Pipe Line.				*		6:3321, 3327.
Grant Pipe Line.				*		6:3321, 3327.
Union Pipe Co.				*		6:3321, 3327.
Pennsylvania Transportation Co.				*		6:3321, 2327.
Antwerp Pipe Co.				*		6:3321, 3327.
Hunter & Cummings.				*		6:3321, 3327.
Clarion Pipe Line.				*		6:3327.

Partial list of concerns acquired by Standard Oil interests since the organization of the Standard Oil Company of Ohio in 1870—Continued.

PIPE LINE CONCERNS—Continued.

Name and date.	Location.	Method of acquisition.			Remarks.	References.
		Stock purchase.	Property purchase.	Property purchase through company organized for that purpose.		
1878.						
Smith's Ferry Oil Transportation Co.	.....	•	.....	.....	.....	17: 3262, 3353.
1879.						
Franklin Pipe Co.	.....	•	.....	.....	Minority interest only.....	Defendants' Exhibit 282.
1883.						
Tide Water Pipe Co.	.....	•	.....	.....	Minority interest only acquired, but pooling agreement adopted.	17: 3320.
1886.						
Pittsburg Pipe Line	.....	.....	•	.....	.....	6: 3019–3022, 3132.

1890.						
Western and Atlantic Pipe Line Co.	.....	*	.....	.....	.....	6:3134; 17:3331.
1895.						
Mellon Pipe Line.....	.....	.....	*	.....	.....	17:3325.
Crescent Pipe Line Co.....	.....	*	.....	.....	.....	17:3325.
1899.						
Indiana Pipe Line and Refining Co.[b]	Indiana.....	*	.....	.....	Stock purchased by General Industrials Development Syndicate, London.	2:582; 17:3310.
Manhattan Oil Co.....	Ohio and Indiana...	*	.....	.....	.....do.....	Brief, p. 103, *ante*

* About 1886.

[b] About 1899.